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Ch. 22

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1942

No. 826

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R. E. TAYLOR, APPELLANT,

vs.

THE STATE OF MISSISSIPPI

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APPEAL FROM THE SUPREME COURT OF  
THE STATE OF MISSISSIPPI

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FILED MAR 15 1943 , 194 .



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## Organization of the Court

[fol. 3]

Minutes and proceedings had and done at regular term of the Circuit Court, Madison County, State of Mississippi, began and held at the court house, in the City of Canton, in said county and state, beginning Monday morning at nine o'clock A.M., June 22, 1942.

Upon petition handed me by Hon. E. C. Fishel of Hattiesburg, Miss., it being the appointment made by the Governor Paul B. Johnson for the seventh Judicial District of Mississippi as follows to-wit:

There were present Honorable E. C. Fishel, Judge presiding; H. B. Gillespie, District Attorney; Nelson Cauthen, County Attorney; R. S. Streit, Court Stenographer; C. H. James, Sheriff and R. C. Randel, Circuit Clerk.

### State of Mississippi

To All Whom these Presents shall Come, Greetings:

Know, Ye, That by virtue of the authority in me vested by the Constitution and Laws of the State of Mississippi, as Governor, I do hereby appoint, Hon. E. C. Fishel, Hattiesburg, Special Judge, relieving Judge J. F. Barbour for the Circuit Court of Madison County, Mississippi, which convenes Monday, June 22, 1942, County State of Mississippi and I do authorize, empower, and enjoin him, the said Hon. E. C. Fishel to execute and fulfill the duties of said office according to law, and to have and to hold said office from the date hereof, with all the powers, privileges and emoluments thereto appertaining until the said appointment is cancelled or revoked by competent authority, or until his successor in office shall have been duly appointed, qualified and installed in said office, accordance with the laws of the State.

In testimony thereof, I, Paul B. Johnson, Governor of the State aforesaid, have caused these letters to be made

patent, and the Great Seal of the State to be thereunto affixed.

Given under my hand, at the city of Jackson, the nineteenth day of June, in the year of our Lord One Thousand Nine Hundred and Forty Two.

PAUL B. JOHNSON, GOVERNOR

By the Governor

Walker Wood, Secretary of State

I, E. C. Fishel, do solemnly swear that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of Judge Pro-tem of the seventh Circuit Court District of Mississippi; that I will faithfully discharge the duties of the office upon which I am about to enter, (Judge, Pro-tem of the seventh Circuit District of Mississippi). So Help Me God. E. C. Fishel. Sworn to and subscribed before me this the 22, June A. D. 1942. R. C. Randel, Circuit Clerk of Madison Co., Mississippi.

Venire Facias

The State of Mississippi. To the Sheriff of Madison County: You are hereby commanded to summon, S. B. Lacy, C. C. Gartee, Jr., R. Thomas, L. O. Favor, G. Lehman, R. H. Holmes, Jr., E. C. Wall, C. Chance, M. E. Ragsdale, Homer Casteel, Jr., T. C. Riddick, J. L. Montgomery, B. L. Kearney, Thos. Hardy, J. M. Divine, W. L. Bardin, J. E. Hardy, G. D. Hedgepeth, P. L. Scott, S. J. Crisler, Luther Martin, S. K. Echols, Joe Cook, Stanley McDaniels, Leon Lynch, H. C. Waldrop, F. H. Battley, C. C. Lutz, Tony Klaas, A. W. Noland, J. S. Harris, Earl Holly, J. C. Brown, J. E. Richardson, Will Ratliff, Douglas Weeks, M. S. Cox, Jr., J. A. Minninger, C. L. Hogue, J. B. Cobb, W. J. Haffey, I. B. Whelan, Coleman Norman, M. N. Pitchford, Walter F. Ray,

E. W. Hill, D. S. Waldron, R. K. Shannon, W. K. Pace, C. H. Smith, W. C. Holleman, W. W. Terry, D. C. Cauthen, D. W. Murphey, J. A. Dickenson, E. B. Parker, W. E. Mansell, W. W. Billingslea, W. M. Greenwaldt, H. B. Dendy, W. S. Milton, Earl A. Simpson of your county, they having been legally drawn as Jurors, to be and appear before the Circuit Court of Madison County, at the next term of said Court, beginning on the 4 Monday in June A. D. 1942, to serve as Petit Jurors, for the week in said term beginning on Monday, the 22, day of June A. D. 1942, at nine o'clock A.M.

Herein Fail Not, and have you this process there on the first day of said Term with your endorsement thereon, showing how you have executed the same. Witness my hand as Clerk, with the seal of said Court thereto affixed, this the 17 day of June A. D. 1942.

By J. F. Barbour, Judge

### Sheriff's Return

In pursuance of the mandate of the within Writ, I have executed the same by summoning as directed in the said Writ, the following Jurors to-wit:

S. B. Lacy, G. Lehman, M. E. Ragsdale, J. L. Montgomery, J. M. Divine, C. C. Gartee, Jr., R. Thomas, L. O. Favor, R. H. Holmes, Jr., E. C. Wall, J. C. Chance, Homer Casteel, Jr., T. C. Riddick, Thomas Hardy, W. L. Bardin, G. D. Hedgepeth, P. L. Scott, S. J. Crisler, Luther Martin, S. K. Echols, Stanley McDaniels, F. H. Battley, C. C. Lutz, Tony Klaas, A. W. Noland, J. S. Harris, Earl Holly, J. C. Brown, J. E. Richardson, Will Ratliff, Douglas Weeks, M. S. Cox, Jr., J. A. Minninger, C. L. Hogue, J. B. Cobb, W. J. Haffey, I. B. Whelan, Coleman Norman, M. N. Pitchford, Walter F. Ray, E. W. Hill, D. S. Waldron, R. K. Shannon, W. K. Pace, C. H. Smith, W. C. Hollman, W. W. Terry, D. C. Cauthen, D. W. Murphey, J. F. Dickerson, E. B. Parker,

W. E. Mansell, W. W. Billingslea, W. M. Greenwaldt, H. B. Dendy, W. S. Milton, E. A. Simpson.

Dated this 22 day of June A. D. 1942. C. H. James, Sheriff

Out of the Venire Facias the following persons are not found in county and excused to-wit: L. O. Favor, Homer Casteel, Jr., P. L. Hearney, J. E. Handy, Joe Cook, Stanley McDaniels, J. R. Lynch, H. C. Waldrop, Earl Holly, J. A. Dickerson, J. M. Divine, R. Thomas, R. H. Holmes, Jr., J. C. Chance, T. C. Riddick, P. L. Scott, S. J. Crisler, J. E. Richardson, W. W. Terry.

From the Veniremen drawn, summoned and appearing, the Judge, in open court drew from separate receptacles, in the manner provided by the statute the following persons to serve as Grand Jurors for the present term of court who came forward and were empaneled to-wit: Gerald Lehman, Luther Martin, C. H. Smith, C. C. Lutz, W. E. Mansell, M. N. Pitchford, Will Ratliff, I. B. Whelan, J. C. Brown, D. C. Cauthern, J. L. Montgomery, W. L. Bardin, D. S. Waldron, A. W. Noland, W. W. Billingslea, D. W. Murphey, S. K. Echols, E. W. Hill.

Thereupon the court appointed Will Ratliff, Foreman, of said Jury, who was then and there sworn in manner and form as required by statute, when the Grand Jurors on their respective parts took the same oath their foreman had taken on his part on their presence and hearing, then the Court duly charged said Grand Jurors concerning its duties as the law requires, after said charge the court appointed and duly swore W. P. Horn, bailiff of said Grand Jury, who then retired in charge of them and said bailiff to consider such matters that might come before them and of their presentment.

Out of the Venire Facias the following persons were drawn, sworn and empaneled to serve as Jurors number one for the week ending June 27, 1942 to-wit: S. B. Lacy, F. H. Battley, M. E. Ragsdale, G. D. Hedgepeth, Thomas Hardy,

Tony Klaas, W. J. Haffey, E. A. Simpson, Coleman Norman, C. L. Hogue, M. S. Cox, Jr., W. F. Ray.

Out of the Venire Facias the following persons were drawn, sworn and empaneled to serve as Jurors number two for the week ending June 27, 1942 to-wit: H. B. Dendy, W. C. Holleman, E. B. Parker, W. M. Greenwaldt, H. J. Cobb, J. E. Dunning, R. D. Bunyard, W. M. Lowery, J. N. Brown, W. R. Hart, E. A. Donohoe, D. H. Summerlin.

## Indictment

[fol. 7]

MADISON COUNTY CIRCUIT COURT

June Term, A. D. 1942

STATE OF MISSISSIPPI, MADISON COUNTY

THE GRAND JURORS of the state of Mississippi, taken from the body of good and lawful men of Madison County, elected, empaneled, sworn and charged in inquire in and for said County at the Term aforesaid of the County at the Term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that R. E. TAYLOR AND MRS. R. E. TAYLOR late of the County aforesaid, on the 29th day of June A. D. 1942, at the County aforesaid did then and there wilfully, intentionally, unlawfully, and feloniously teach and disseminate teachings orally in that they said to Mrs. T. K. Joyner, Mrs. W. B. Denson, Mrs. Huston Bryant, and other persons whose names are at this time unknown to the Grand Jury, *"It is wrong for the President to send the army across for they are just being shot down for nothing. Hitler will rule, he will not come over here to do it. He won't have to. If we would quit kneeling and worshipping our flag peace would come to us, and study and learn this literature and worship in the right way peace would come to earth, but as long as we go around worshipping our flag*



and government, we will never have peace, for we just worship our flag and government for our religion", and in that they said to the same parties, "It is wrong for the President to put our boys in uniform and send them across. The sooner we quit bowing down to the flag that much sooner we will have peace." and that they said to Mrs. T. K. Joyner and Mrs. W. B. Denson that their boys might have thought they were doing right, but that it is wrong to fight our enemies; and other words and teachings all said teachings and words were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America and the State of Mississippi. And did then and there wilfully, intentionally unlawfully, and feloniously distribute literature and printed matter in that they did hand out and distribute to Mrs. T. K. Joyner, Mrs. Huston Bryant, Mrs. W. B. Denson, and other persons whose names are unknown to the Grand Jury at this time, books and pamphlets entitled GOD AND THE STATE which contain the statement, "Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment—", and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled REFUGEES which contain the statements, "All nations of the earth today are under the influence and control of the demons . . . All the nations suffer the same



fate or come to the same end, because all nations of earth are on the wrong side, that is on the losing side. All of such nations are against the Theocratic Government, that is the government or kingdom of the Almighty God . . . All are under the control of the invisible host of demons." and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled LOYALTY which contain the statement, "For the Christians to salute a flag is in direct violation of God's specific commandment", and which contain other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled END OF THE AXIS POWERS, COMFORT ALL THAT MOURN which contain the statement, "Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world.", and which contain other paragraphs and statements of disloyalty to the United States of America; all of said literature, printed matter, books and pamphlets were published by Watchtower Bible and Tract Society, Inc., International Bible Students Association, and were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States of America, and the State of Mississippi contrary to the form of Statute in such case made and provided, and against the peace and dignity of the State of Mississippi.

H. B. Gillespie  
DISTRICT ATTORNEY

No. 8672

**MADISON COUNTY CIRCUIT COURT**

**JUNE TERM, 1942.**

**THE STATE**

**VS.**

**R. E. TAYLOR AND**

**MRS. R. E. TAYLOR [This name stricken on original]**

**INDICTMENT—NO PROSECUTOR**

**Witnesses**

**Mrs. W. B. Denson**

**Mrs. T. K. Joyner**

**Mrs. Houston Bryant**

**Vallie O'Neal**

**A True Bill**

**Will Ratliff**

**Foreman of Grand Jury.**

**Filed this 29 day of**

**June 1942.**

**R. C. Randel, Clerk.**

**By ..... Deputy.**

**Capias**

[fol. 10]

3645. CAPIAS. Under Code 1892.

**THE STATE OF MISSISSIPPI,**

**TO THE SHERIFF OF MADISON COUNTY—Greetings:**

We command you to take the body of **R. E. TAYLOR** IF TO BE FOUND IN YOUR COUNTY, and him safely keep, so that you have his body before the Judge of our Circuit Court, to be holden on the 29 day of June A.D., 1942, at the Court House thereof, in the County of Madison then and there to answer the State of Mississippi upon a charge exhibited against him by the Grand Jury of said

County, for *teaching doctrine pretending to create disrespect to the flag of the United States of America.*

Herein fail not, and have you then and there this Writ with your endorsement thereof, showing how you have executed the same.

Witness my hand as Clerk, with the seal of said Court hereto affixed this the 29 day of June A. D. 1942.

R. C. Randel, Clerk.

By ....., D. C.

### SHERIFF'S RETURN

I have this day executed the within Writ personally by arresting the within named R. E. TAYLOR.

This the 29 day of June A. D., 1942.

C. H. JAMES, Sheriff

By ....., D. S.

No. 8672

CIRCUIT COURT

CAPIAS

THE STATE OF MISSISSIPPI

STATE

VS.

R. E. TAYLOR

Issued the 29 day of

JUNE A. D. 1942

R. C. RANDEL Clerk.

By ....., Deputy.

Filed the 29 day of

June A. D., 1942.

R. C. RANDEL, Clerk.

By ....., Deputy.

**Motion to Quash Indictment**

[fol. 12]

IN THE CIRCUIT COURT OF  
MADISON COUNTY SEVENTH JUDICIAL DISTRICT  
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)


Now comes the above defendant in the above entitled and numbered cause and file this *their* MOTION TO QUASH THE INDICTMENT returned and filed herein against him and as grounds therefor say:

**ONE**

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

**TWO**

The Statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Section 1 thereof deprives these defendants of their inherent rights of freedom to



worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

**SIX**

The Statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

**SEVEN**

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

WHEREFORE defendant prays that the Court upon consideration hereof, sustain this MOTION TO QUASH the indictment and dismiss the indictment and order the defendant discharged with his costs, and defendants pray for such other and further relief as he may show himself justly entitled to.

**G. C. CLARK**  
Attorney for Defendant

8672  
Filed 6-30-42  
R. C. Randel, Clerk.

## **Order Overruling Motion to Quash**

[fol. 15]

IN THE CIRCUIT COURT OF  
MADISON COUNTY  
SEVENTH JUDICIAL DISTRICT  
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The motion to quash the indictment, duly and timely filed by defendant herein, came on for consideration and the Court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

ORDERED, ADJUDGED that said motion to quash the indictment is overruled, to which action of the Court the defendants are allowed an exception.

Book 12 P. 223

## **Demurrer to Indictment**

[fol. 16]

IN THE CIRCUIT COURT OF  
MADISON COUNTY, MISSISSIPPI  
JUDICIAL DISTRICT  
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Now comes the above named defendant, in the above entitled and numbered cause and files this his demurrer to the indictment returned and filed herein against him and as grounds therefor says:

## ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

## TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of the defendant because Section 1 thereof deprives the defendant of his inherent rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

## THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

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#### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

WHEREFORE defendant prays that the Court upon consideration hereof, sustain this DEMURRER to the indictment and dismiss the indictment and order the defendant discharged with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

Attorney for Defendant

State of Mississippi,  
Madison County.

This is to certify that G. C. Clark, attorney of record herein, states this Demurrer is not filed for delay only, but that he believes affiant has a just and meritorious cause for this demurrer, and believes that same should be sustained..

Sworn to and subscribed before me this the 25 of June, 1942.

Clerk

8672

Filed 6-30-42

R. C. Randel, Clerk.

## **Order Overruling Demurrer**

[fol. 19]

IN THE CIRCUIT COURT OF  
MADISON COUNTY  
SEVENTH JUDICIAL DISTRICT  
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The demurrer to the indictment, duly and timely filed by defendant herein, came on for consideration and the Court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

ORDERED, ADJUDGED that said demurrer to the indictment is overruled, to which action of the Court the defendants are allowed an exception.

Book 12- P. 225

**Arraignment**

[fol. 20]

No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Now comes the state by her district attorney, H. B. Gillespie who prosecutes on behalf of the state and this defendant R. E. Taylor in his proper person and by his attorney who was duly and legally arraigned charging him with being disloyal to the Flag of the U. S. A. and entered a plea of not guilty.

**Given Instructions**

[fol. 21]

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)**DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER THREE**

You are instructed that in this country every citizen has the absolute right to freely distribute literature and to speak freely upon any subject and thereby express himself and give any opinion concerning any matter without being held answerable therefor to the State of Mississippi, so long as he does not advocate the overthrow of the government, the Constitution and laws thereof, by himself or others, by force and violence or teach, preach or disseminate

*doctrines tending to create disrespect or disloyalty to Government and if you so find, or if you have a reasonable doubt thereof, you will acquit defendant.*

Given

The above instruction as amended was given by court and declined by defendant. The part in [*italics in print*] being the amendment.

E. C. Fishel  
Special Judge

Refused & Filed  
6/30/42  
R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER EIGHT

You are instructed that under Section 18 of Article 3 of the Constitution of the State of Mississippi each and every inhabitant of the State is granted free enjoyment of all 'religious sentiments' and the different modes of worship shall be held sacred and the right thereby secured to every one to worship God according to the dictates of his conscience shall not be interfered with or denied by law unless the exercise thereof is injurious to public morals and dangerous to the peace and safety of the State, from which exercise of the right said danger must be found to be clear, immediate and present and not speculative in any indefinite time in the future. If you believe or find from the evidence, or have a reasonable doubt, that the defendant in the performance of the acts charged in the indictment was exercising his right to worship Almighty God according to the dictates of his conscience in distribution of said literature,

and you further find that the exercise of such right does not endanger immediately, clearly and presently the peace and safety of the State as well as the safety of the United States then you will acquit the defendant and by your verdict say: "We the jury find the defendant not guilty".

Filed 6-30-42

R. C. Randel, Clerk.

Timely presented and refused; exception taken.

Judge

Circuit Court

No. 8672

## IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

### DEFENDANT'S REQUESTED INSTRUCTION NUMBER FOURTEEN

The term 'reasonable doubt' is a doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your conscience and after you have fully investigated the credible evidence and compared it in all of its parts you can say, 'I doubt if he is guilty', then it is a reasonable doubt. It is a doubt which settles in your judgment and finds a resting place there, and which produces in your mind a grave uncertainty as to the verdict to be given.

Given

6/30/42

R. C. Randel, Clerk.

No. 8672  
IN THE CIRCUIT COURT  
THE STATE OF MISSISSIPPI  
V.

RALPH E. TAYLOR, *Defendant* (s)  
DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER SIXTEEN

You are instructed that Jehovah's witnesses have a right to believe, if they so desire, that to salute the flag is worshipping an image, and if they decline to salute the flag on this ground, the same would not be in violation of any law as charged under the indictment. To force one to salute the flag contrary to conscientious scruples as result of his faith and belief and contrary to his form of worship, would be in violation of the First and Fourteenth Amendments to the Constitution of the United States; and you cannot consider defendant's refusal to so salute in arriving at your verdict.

Given

Filed 6-30-42  
R. C. Randel, Clerk.

No. 8672  
INSTRUCTION NO. 20

The court instructs the jury that the state must prove that the defendant did disseminate the teachings in question, with the willful intent to cause disloyalty and disrespect to the government of the United States and of the State of Mississippi; and a stubborn refusal to salute the flag of the United States and unless you believe that, that was true beyond every reasonable doubt, then the form of your verdict should be, "We the jury find the defendant 'Not Guilty.'"

Given

Filed 6-30-42  
R. C. Randel, Clerk.

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The Court instructs the jury for the State that if you believe from the evidence beyond a reasonable doubt that the defendant intentionally, unlawfully and feloniously taught or disseminated any teachings orally designed and calculated to encourage disloyalty to the Government of the United States, or the State of Mississippi as charged in the indictment or that he distributed any sort of literature or printed matter designed and calculated to encourage disloyalty to the Government of the United States or the State of Mississippi, or which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States or the State of Mississippi, it will be your sworn duty to find the defendant guilty as charged.

Given

Filed 6-30-42

R. C. Randel, Clerk.

### **Refused Instructions**

[fol. 27]

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

### **DEFENDANT'S REQUESTED INSTRUCTION NUMBER ONE**

You are instructed that there is no statute or law of the State of Mississippi which requires an adult person not in

attendance at the public schools to perform the salute to the American flag or any flag, and in arriving at your verdict you cannot consider the fact that the defendant refused to salute or now refuses to salute the American flag.

Refused

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant (s)*

DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER TWO

You are instructed that words spoken or printed must be more than a theoretical discussion, and before such can be made the basis of a conviction, you must find from the evidence beyond a reasonable doubt that such words are of such a nature as to create a clear, immediate and present danger that they will bring about the overthrow by force and violence of the Constitution, laws and government of the State of Mississippi and the United States, which you must find from the evidence beyond a reasonable doubt to be a clear, immediate and present danger. If you fail so to find or have a reasonable doubt thereof, defendant is entitled to an acquittal.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.



No. 8672  
IN THE CIRCUIT COURT  
THE STATE OF MISSISSIPPI  
V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER FOUR

You are instructed that the defendant has a legal right to print, sell, publish, circulate and otherwise distribute literature which attacks any religious principle, dogma, or doctrine, or any political belief, dogma, or doctrine, and to persuade others to their point of view, the defendants may resort to exaggeration, to vilification of men who have been or are prominent or low in church and state, and even may resort to false statements for this purpose, because the people through the Constitution have ordained in the light of history, that in spite of excesses and abuses this liberty is essential to enlightened opinion and democracy, and if there is any evidence of such you will not consider it in arriving at your verdict.

Refused

Timely presented and refused; exception taken.

Judge      Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672  
IN THE CIRCUIT COURT  
THE STATE OF MISSISSIPPI  
V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER FIVE

The defendant offered in evidence and contends that he does not advocate or teach orally or in writing not to salute

the flag or not bear arms in defense of the country, but that he merely declares the commands of Almighty God with reference thereto. If you find and believe that the defendant does not advocate and teach, but merely declares the commands of Almighty God, or if you have a reasonable doubt thereof, you will acquit the defendant.

Refused

Timely presented and refused; exception taken.

Judge      Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER SIX

You are instructed that according to Section 6 of Article 3 of the Constitution of the State of Mississippi the people of this State have the inherent right to alter and abolish their form of government whenever they deem it necessary to their safety and happiness, and every person has the right to advocate a change in the form of government provided that he does not advocate the overthrow thereof by force and violence; and if you find or believe from the evidence, or have a reasonable doubt, that the defendant advocated the establishment in due time of God's Kingdom described by the defendant as Jehovah's Theocracy, as foretold in the Bible, and if you find and believe from the evidence, or have a reasonable doubt, that the defendant in advocating the establishment of such Theocracy does not urge a change in the present form of government by force and violence, you will acquit the defendant and by

your verdict say: "We the jury find the defendant not guilty."

Refused

Timely presented and refused; exception taken

Judge      Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION

NUMBER SEVEN

You are instructed that under Section 13 of Article 3 of the Constitution of the State of Mississippi freedom of press and of speech shall be held sacred, and the State cannot interfere with the exercise thereof so long as the individual does not advocate the overthrow of the government by force and violence.

Refused

Timely presented and refused; exception taken

Judge      Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT  
THE STATE OF MISSISSIPPI  
V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER NINE

You are instructed that according to the case of *Ex parte Milligan*, decided by the Supreme Court of the United States during the Civil War, reported in 4 Wall. 2, 'The Constitution of the United States is a law for *rulers* and people equally in war and peace; it covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the mind of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy and despotism. But the theory of necessity on which it is based is false for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence.

Refused

Timely presented and refused; exception taken.

Judge      Circuit Court

Refused &amp; Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT  
THE STATE OF MISSISSIPPI  
V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER TEN

You are instructed that regardless of how ridiculous,

unreasonable and objectionable a particular belief or practice with reference to the laws laid down by the Creator in the Bible may appear to be, to permit the judge or jury to intrude their powers into the field of opinion and to restrain the profession or propagation of principles alleged to be based on the Bible on the supposition of their ill tendency is a dangerous fallacy which destroys all freedom of worship of Almighty God. It is not for you to say that the activity of the defendants is not an act of worship.

You must assume that it is and can only convict the defendants for the exercise thereof in this case when you find or believe that they advocate the overthrow of the government by force and violence, clearly, immediately and presently.

Refused

Timely presented and refused; exception taken.

Judge      Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

NUMBER ELEVEN

You are instructed that the defendant has the right to worship Almighty God according to the dictates of the heart, to adopt and to hold any opinion whatsoever on the subject of the Bible, and to do any act such as to distribute the literature in question, or to forbear to do any act such as to refuse to salute the flag of the United States, the doing or the forbearing of which does not seriously and

immediately endanger the public morals, health and safety.

Refused

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION

NUMBER TWELVE

You are instructed that according to the Constitution of the State of Mississippi no defendant in a criminal case can be convicted for the crime of sedition or treason except from the mouths of two witnesses other than the defendant himself.

Refused

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION

NUMBER THIRTEEN

Evidence has been offered that defendant takes a position of strict neutrality as to the wars between nations of the world, and because of such position he refuses to participate in any capacity for any nation in such wars. You are specially instructed that such evidence is immaterial

to the charge of sedition and should be disregarded and not considered in arriving at your verdict.

Refused

Timely presented and refused; exception taken.

Judge      Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

# IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

## DEFENDANT'S REQUESTED INSTRUCTION NUMBER FIFTEEN

Freedom of speech and freedom of the press are guaranteed and protected by the Constitutions of Mississippi and the United States, and this liberty is not confined to newspapers but necessarily embraces pamphlets and leaflets pertaining to matters of government and the Bible. If you find and believe from the evidence or have a reasonable doubt that defendants were engaged in activity of 'free press' and 'free speech' you will acquit the defendants and you by your verdict will say: "We the jury find the defendant not guilty".

Refused

Timely presented and refused; exception taken.

Judge      Circuit Court

Refused and Filed

6/30/42

R. C. Randel, Clerk.

No. 8672  
IN THE CIRCUIT COURT  
THE STATE OF MISSISSIPPI  
V.

RALPH E. TAYLOR, *Defendant* (s)  
DEFENDANT'S REQUESTED INSTRUCTION  
NUMBER SEVENTEEN

You are instructed that defendant and all other of Jehovah's witnesses have a right to call upon the people and to knock on the doors and to ring the doorbell at the homes of the people, and to bring to the attention of the people the recorded Word of God, by means of the literature which they distribute and the phonograph records which are used to reproduce recorded Bible talks; and that to knowingly and willfully endeavor to deprive them of such civil liberties guaranteed under the First and Fourteenth Amendments to the United States Constitution by color of state law would be in violation of Sections 51 and 52 of Title 18, United States Code Annotated.

Refused

Timely presented and refused; exception taken.

Judge    Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672  
INSTRUCTION 18

The court instructs the jury for the defendant that it takes 12 jurors to bring in a verdict of "Guilty", and if any one of the jurors disagrees as to guilt of the defendant, then the form of the verdict should be, "We, the jury cannot agree".

Refused

Refused & Filed

6/30/42

R. C. Randel, Clerk.



No. 8672

## INSTRUCTION NO. 19

The court instructs the jury for the defendant that you should bring in a verdict of "Not guilty", for the defendant and the form of your verdict should be, "We, the jury find the defendant, not guilty".

Refused

Refused &amp; Filed

6/30/42

R. C. Randel, Clerk.

**Judgment**

[fol. 42]

No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Now comes the State by her attorney, H. B. Gillespie, who prosecutes on behalf of the State and this defendant, R. E. Taylor in his proper person who was duly and legally arraigned charging him with teaching and distributing Seditious Literature and disrespect to the Flag of the United States of America and entered a plea of Not Guilty,

Now puts himself upon the Country, came a Jury of 12 good and lawful men composed of J. E. Johnson and eleven others who were duly and legally drawn, sworn and empaneled to try such cases as provided by the statute, after hearing the evidence of the witnesses and the arguments of the counsels and receiving the instructions of the court to consider of their verdict, presently they returned into open court and rendered the following verdict, "We, the Jury find the defendant guilty as charged".

It is ordered and adjudged by the court that this defendant, R. E. Taylor be and he is sentenced to the State Penitentiary for the duration of the war or not to exceed 10 years and that his bond is fixed at \$1500.00.

## Exhibits

[fol. 43]

### EXHIBIT 1

#### LINES USED FROM BOOK ENTITLED "REFUGEES" PAGE 6 & 7

All nations of the earth today are under the influence and control of the demons.

All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God.

. . . and all are under the control of the invisible host of demons, . . .

Exhibit 1, Mrs. Denson

6/30/42

R. S. Streit, Rep.

### EXHIBIT 2

#### LINES USED FROM BOOK ENTITLED "LOYALTY" PAGE 8

But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment.

Exhibit 2, Mrs. Denson

6/30/42

R. S. Streit, Rep.

### EXHIBIT 3

#### LINES USED FROM BOOK ENTITLED "REFUGEES" PAGES 6 & 7

ALL nations of the earth today are under the influence and control of the demons.

All the nations suffer the same fate or come to the same

end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God.

. . . all are under the control of the invisible host of demons,  
Exhibit 3, Mrs. Bryant

6/30/42

R. S. Streit, Rep.

EXHIBIT I  
LINES USED FROM BOOK ENTITLED  
"END OF AXIS POWERS"  
"COMFORT ALL THAT MOURN"  
PAGE 16

Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world.

Exhibit I, Mrs. Joyner

6/30/42

R. S. Streit, Rep.

EXHIBIT A  
LINES USED FROM BOOK ENTITLED  
"GOD AND THE STATE"  
PAGE 18

Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony

of saluting any flag is a violation of God's specific commandment. . .

Exhibit 2, Mrs. Bryant

6/30/42

R. S. Streit, Rep.

Exhibit 2, Joyner

6/30/42

R. S. Streit, Rep.

## EXHIBIT B

LINES TAKEN FROM BOOK ENTITLED "LOYALTY"

### PAGE 8

For the Christian to salute a flag is in direct violation of God's specific commandment.

Ex. 1, Mrs. Bryant

6/30/42

R. S. Streit, Rep.

Ex. 1. Taylor

6/30/42

R. S. Streit, Rep.

TODAY many are in perplexity as to what to do to protect and safeguard the interests of themselves and their children. The remedy for the present unhappy condition is the rule of the earth by righteous powers. God has made it possible to now learn just how and when such righteous rule will come into full control. The great and comforting truths in the Bible are set forth in the book entitled CHILDREN. It contains instructions for all who would be children and subjects to the great Lord and King Christ Jesus. It is not religious, but fills the sincere heart with contentment and hope. It is not a child's book, but is for adults and children as well. Here is a copy for you, and you may contribute twenty-five cents to help publish more like books. Read CHILDREN, rejoice and live.

TO WHOM IT MAY CONCERN:

This is to certify that *R. E. Taylor* whose signature appears

below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and is therefore one of Jehovah's witnesses; that he is sent forth by this Society, which is created and organized and chartered by law to preach the gospel of God's kingdom, and that Jehovah's witnesses are commanded to obey God by preaching the gospel, which commandments appear in the Bible at Isaiah 61:1,2; Isaiah 43:9-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; and 1 Corinthians 9:16; and that Jehovah's witnesses are compelled to obey God rather than men. (Acts 3:23; Acts 4:19; and Acts 5:29)

That in obedience to God's commandments Jehovah's witnesses preach the gospel and worship Almighty God by calling upon the people at their homes and exhibiting to them the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them.

That said witness of Jehovah is doing this work of bearing testimony before the people in strict accord with the fundamental law of the land and in obedience to God's law, which is supreme. Any kindness and consideration shown this Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46)

Watch Tower Bible & Tract Society

By N. H. Knorr, President

Name Ralph E. Taylor

Address 516- 16 St. S. W.

Birmingham, Alabama.

Ex. A Cross Ex. Taylor

6/30/42

R. S. Streit, Rep.

WHY

is it that God permits "Christendom" to be distressed with war and attacks by the pagans, and with great sorrow and suffering of the people? What good purpose will this serve?

**THERE IS AN ANSWER** which will satisfy all honest persons. It is God's own answer from His sacred Word. To know it will bring you great relief, comfort and good hope.

Those whom Jehovah God sends forth as his witnesses are commissioned to bring His answer and message to all seeking the truth. In the face of hard times they are still able to offer this needed information in books, periodicals and recorded talks. The one presenting this can explain such provision, and it will be for your good and you are under no obligation to contribute any money. "The wise will hear." To Whom It May Concern:

This is to certify that *R. E. Taylor* whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and that said person is one of Jehovah's witnesses. The Watch Tower Bible and Tract Society, created and organized and chartered by law to preach the gospel of God's Kingdom, sends forth Jehovah's witnesses to do this work as commanded by the Almighty God. Jehovah's witnesses are ordained and commissioned by God and the signer of this card Scripturally claims such ordination and commission, as set forth in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10:7-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; 1 Corinthians 9:16. Being one of Jehovah's witnesses, the signer must obey God rather than men. (Acts 3:23; Acts 4:19; Acts 5:29) Jehovah's witnesses, in obedience to God's commandments, preach the gospel and worship Almighty God by calling upon people at their homes, exhibiting to them the message of the gospel of said Kingdom

in printed form. Bibles, books, booklets, and magazines are offered free to those that are poor, or on contribution, which contribution is accepted for the publishing of other literature so that the Word of the Lord may have greater circulation in all this work for a witness, giving other people the opportunity of learning of God's gracious provision for them. Said witness of Jehovah is doing this work of his own volition and is bearing the testimony before the people in accordance with the provisions of the fundamental laws of this land in obedience to God's commandment, which is supreme. Any kindness shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46) The Society or its appointed representatives will be pleased to furnish authoritative proof as to whether the signer of this card is one of Jehovah's witnesses.

Watch Tower Bible & Tract Society  
By N. H. Knorr, President

Name Ralph E. Taylor  
Address 516, 16 St. Birmingham  
Alabama

### **Motion for New Trial**

[fol. 53]

No. 8672

IN THE CIRCUIT COURT OF MADISON COUNTY,  
MISSISSIPPI, FOR THE SEVENTH JUDICIAL DIST.

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant.* (s)

Comes defendant and moves the court to grant him a new trial in the above styled and numbered cause for the following reasons to-wit:

**ONE**

The court erred in overruling defendant's motion to quash the indictment against him.

**TWO**

The court erred in overruling the demurrer to the indictment against defendant.

**THREE**

The court erred in overruling defendant's peremptory instructions at the end of the State's evidence

**FOUR**

The court erred in permitting State's evidence objected to by defendant.

**FIVE**

The court erred in refusing evidence offered by defendant.

**SIX**

The court erred in refusing to grant defendant's motion for directed verdict at conclusion of all the evidence.

**SEVEN**

The court erred in refusing defendant's instructions No. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 17, 18, 19.

**EIGHT**

The court erred in granting State's Instructions No. 1.

**NINE**

The jury found contrary to law and evidence.

**RALPH E. TAYLOR**

Defendant

**G. C. CLARK**

Attorney for Defendant

Sworn to and subscribed before me this the 30 day of June, 1942.

**R. C. RANDEL**

Filed 6-30-42

R. C. Randel, Clerk.



**Order  
Overruling Motion for New Trial**

[fol. 55]

No. 8672

IN THE CIRCUIT COURT OF  
MADISON COUNTY, MISSISSIPPI, FOR THE  
SEVENTH JUDICIAL DISTRICT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The motion for a new trial duly and timely filed by defendant herein, came on for consideration and the court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

ORDERED, ADJUDGED AND DECREED that said motion for new trial is overruled.

E. C. FISHEL

Judge Circuit Court Madison  
County, Mississippi.

**Motion for Appeal to Supreme Court**

[fol. 56]

No. 8672

IN THE CIRCUIT COURT OF  
MADISON COUNTY, MISSISSIPPI FOR THE  
SEVENTH JUDICIAL DISTRICT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Comes the above named defendant, Ralph Taylor, in the above styled and numbered cause and prays an appeal to

the next term of the Supreme Court of the State of Mississippi, and tenders herewith a good and sufficient appearance bond for such an appeal.

Ralph E. Taylor  
Ralph Taylor

Filed 6-30-42

R. C. Randel, Clerk.

### **Petition for Appeal**

[fol. 57]

No. 8672

Petition to the Circuit Clerk for an Appeal

**STATE OF MISSISSIPPI**

**MADISON COUNTY**

**IN THE CIRCUIT COURT OF MADISON COUNTY,  
JUNE TERM, 1942.**

**TO THE CIRCUIT CLERK OF MADISON COUNTY:**

Your petitioner, the undersigned, RALPH E. TAYLOR respectfully state that at the June Term 1942, of the Madison County Circuit Court, on the 30 day of June, 1942, the above was convicted of sedition and the violation of House Bill 689 of the Regular Legislative Session, 1942, and sentenced to the State Penitentiary until the United States signs a peace treaty with Japan, Germany, and Italy not exceeding ten years. Feeling aggrieved at this conviction they pray an appeal to the Supreme Court and tender herewith, good and valid appeal bonds and affidavits of their inability to make costs bonds or to deposit sufficient amount of cash with the clerk of this Court to pay costs in this case. And ask that an appeal be granted.

RALPH E. TAYLOR  
RALPH TAYLOR  
BY G. C. CLARK

Attorney for Defendant

Filed 6-30-42

R. C. Randel, Clerk.

**Affidavit of Inability to Give Bond**

[fol. 58]

No. 8672

**APPEAL ON AFFIDAVIT OF INABILITY TO GIVE  
COST BOND OR DEPOSIT AMOUNT OF COSTS FROM  
CIRCUIT COURT IN CRIMINAL CASES**

STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)THE STATE OF MISSISSIPPI  
MADISON COUNTYIN THE CIRCUIT COURT OF MADISON COUNTY,  
JUNE 1942 TERM

I, RALPH TAYLOR do solemnly swear that I am unable to give a cost bond or to deposit a sufficient amount to cover all costs, and feeling aggrieved by the judgment and conviction of violating House Bill 689 of the Regular Legislative Session, 1942, and sentence to the State penitentiary until a treaty of peace is signed with Japan, Germany and Italy, not to exceed ten years, as rendered against me in the Circuit Court of Madison County at the June Term, 1942, on the . . day of June, 1942, I desire an appeal to the Supreme Court with stay of Judgment.

Ralph E. Taylor

Ralph Taylor

Sworn to and subscribed before me this the 30 day of  
June, 1942.

Robert C. Randel

Circuit Clerk.

Filed 6-30-42

R. C. Randel, Clerk.

## **Appearance Bond**

[fol. 59]

### **APPEARANCE BOND ON FELONY CASES (Sec. 46 and 47, Miss. Code, 1930)**

**IN THE CIRCUIT COURT OF  
MADISON COUNTY, MISSISSIPPI,  
SEVENTH JUDICIAL DISTRICT,  
JUNE TERM, 1942.**

#### **KNOW TO ALL MEN BY THESE PRESENTS:**

That we, Ralph E. Taylor, Principal and G. C. Clark, JIM G. MOZINGO, SAM CLARK, JACK CLARK and H. G. CLARK, sureties, all residents of the state of Mississippi, are firmly bound unto the State of Mississippi in the penal sum of \$1500, for which payment well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators forever.

The condition of the foregoing obligation is such that, whereas in the Circuit Court of Madison County, Mississippi on the 30 day of June, 1942, the defendant, Ralph E. Taylor was convicted of the alleged crime of violating House Bill 689 of the Regular Legislative Session, 1942, and sentence to serve in the State penitentiary until the United States signs a treaty of peace but not to exceed a term of ten years. And the said Ralph E. Taylor feeling aggrieved by such conviction and sentence has prayed and obtained an appeal to the Supreme Court.

Now if the said Ralph E. Taylor shall appear in the Supreme Court and Circuit Court and abide by and perform such sentence and judgment as may be rendered in

this case, then this obligation to be void, otherwise to remain in full force and effect.

Ralph E. Taylor  
Principal  
G. C. CLARK  
JIM G. MOZINGO  
SAM CLARK  
JACK CLARK  
H. G. CLARK  
SURETIES

**OATH OF SURETIES**  
(Sec. 30, Miss. Code, 1930.)

State of Mississippi  
County of Wayne.

Personally appeared before me, the undersigned authority in and for said County and State the Sureties on foregoing bond G. C. CLARK, JIM G. MOZINGO, SAM CLARK, JACK CLARK and H. G. CLARK sureties on the foregoing bond, who first by me being duly sworn, state on oath that they are worth more than \$1500 in visible property, subject to execution, over and above their legal exemptions and liabilities.

G. C. CLARK  
JIM G. MOZINGO  
SAM CLARK  
JACK CLARK  
H. G. CLARK

Sworn to and subscribed before me, this the 1st. day of July, 1942.

E. E. SIGLER  
Notary-- Chancery Clerk  
S. B. DAWS, D. C.

8672

Filed July 3, 1942  
R. C. Randel, Clerk.

# **Notice to Court Reporter of Appeal**

[fol. 61]

No. 8672

IN THE CIRCUIT COURT OF  
MADISON, COUNTY, MISSISSIPPI, FOR  
THE SEVENTH JUDICIAL DISTRICT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

## **NOTICE TO THE COURT REPORTER TO PREPARE RECORD FOR SUPREME COURT**

I do hereby, hand you this notice to prepare record for Supreme Court from your stenographic notes in the above styled and numbered cause.

The defendant has prayed and obtained an appeal, in this case.

This the 30 day of June, 1942.

Ralph E. Taylor

Ralph Taylor

DEFENDANT

The foregoing bond approved this the 3 day of July, 1942.

C. H. JAMES

Sheriff of Madison County.

## Transcript of Testimony

[fol. 62-182]

### IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

THE STATE OF MISSISSIPPI

V.

R. E. TAYLOR, *Defendant* (s)  
No. 8672

#### A P P E A R A N C E S:

Hon. H. B. Gillespie, District Attorney,  
Hon. Nelson Cauthen, County Attorney,  
Present and representing the State;  
Hon. G. C. Clark, of Waynesboro, Mississippi,  
Present and representing the Defendant.

BE IT REMEMBERED that on, to-wit the 30th day of June, 1942, the same being one of the days of the regular June Term of the Circuit Court of Madison County, Mississippi, for the year aforesaid, the above entitled cause came on for hearing before the HONORABLE E. C. FISHEL, Special Judge, and a jury duly empaneled herein, the following proceedings were had and entered of record:

MRS. HOUSTON BRYANT was called as a witness on behalf of the State, having been first duly sworn, and testified as follows:

#### DIRECT EXAMINATION

BY MR. GILLESPIE:

Q Will you give your name to the stenographer, please?

A Mrs. Houston Bryant.

Q Mrs. Bryant, where do you live, please?

A I live out on the old 16 Highway.

Q That's in Madison County, Mississippi, is it?

A Yes, sir.

Q How long have you lived out there?

A About three months, I suppose.

Q About three months?

A Yes, sir.

Q I will ask you if you know the defendant in this case, Mr. Taylor—this gentleman sitting back here?

A Yes, sir.

Q When did you first meet him, if you remember?

A He came to our home along sometime in the last of May.

Q In the latter part of this past May?

A Yes, sir.

Q Did you then have a conversation with him?

A Yes, sir; he was distributing literature.

Q What was his purpose in coming to your house?

A Selling literature.

Q Selling literature?

A Yes, sir.

Q Did you take some of his literature—pamphlets?

A Yes, sir; we bought two books at that time.

Q At that time?

A Yes, sir.

Q Now, did you later see him, Mrs. Bryant?

A Yes, sir; I was in the home of Mrs. T. K. Joyner.

Q Where does Mrs. Joyner live with reference to your home?

A She lives just across the road from my home.

Q Across the road?

A Yes, sir.

Q Approximately, when was it that you saw this man at Mrs. Joyner's home?

A It was along in the first part of June.



Q Some few days or a week after you had seen him at your home?

A Yes, sir.

Q What was he doing at Mrs. Joyner's home? What was his purpose in being there?

A Well, he had bunches of literature that was already sorted out, twenty-two books in the set.

Q Did you or not secure some of the books then?

A Yes, sir; I bought twenty-two.

Q Did anyone else get any of the literature there at that time?

A Yes, sir; Mrs. Joyner bought twenty-two.

Q Now, did you have a conversation with this man, or did you hear a conversation with him there at Mrs. Joyner's house?

A Yes, sir; I heard it.

Q I want you, in your own way, to tell the jury what that conversation was, if you can—just the best you remember?

A Well, the first time he came to our home he had those books, and he said he was not selling books for a living; said he was selling those—distributing those books for the people to live by, and to teach their children by.

Q That was on the visit to your house?

A Yes, sir.

Q Then, later, on the meeting up at Mrs. Joyner's house, what, if anything, did he say?

A Well, he said it was wrong for our President to send these boys across in uniform to fight our enemies; said it was wrong to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come here to rule; and he said the quicker the people here quit bowing down and worshipping and saluting our Flag and Government, the sooner we would have peace.

**Q** What was it you said about it being wrong to fight our enemies?

**A** He said it was wrong for us to fight our enemies; that we were being shot down for no purpose at all.

**Q** Did you or not at that time hear any statement from him to Mrs. Joyner to the effect that her boy may have thought that he was doing the right thing?

**A** Yes, sir; he said he may have thought he was doing the right thing by going over there and fighting for his country.

**Q** But what did he say about whether it was right or wrong?

**A** He said that it was wrong.

**Q** Now, do you recall any other statements that he made to you, or to Mrs. Joyner, there at that time?

**A** I guess that's about all.

**Q** Now, you say you got some of these books, did you?

**A** Yes, sir.

**BY MR. CLARK:**

We object to the introduction of those books.

**BY THE COURT:**

Let the jury retire into this jury room.

The jury here retired by order of the Court, and in the absence and out of the hearing of the jury, the following proceedings were had and entered of record:

**BY THE COURT:**

Now, let us hear the objections, and let's see the book you are proposing to introduce in the absence of the jury.

**BY MR. GILLESPIE:**

Now, we expect to introduce by this witness a book entitled "Loyalty", and published by the Watch Tower Bible and Tract Society, containing the following sentence on page 8:

"For the Christian to salute a flag is in direct violation of God's specific commandment."

And also a pamphlet entitled "Refugees".

BY THE COURT:

Are those named in the indictment, as well as quoted from?

BY MR. GILLESPIE:

That's true. Entitled "Refugees", published by the Watch Tower Bible and Tract Society, and contains the following paragraphs:

"All nations of the earth today are under the influence and control of the demons."

"All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the THEOCRATIC GOVERNMENT, that is, the government or kingdom of the Almighty God."

"... all are under the control of the invisible hosts of demons."

Q In addition to these two books, did you get other books?

A Yes, sir.

Q Do you recall the title?

A No, sir. There was a bunch of them, but those two, "Loyalty" and the one "God and the State", he pointed out to us to be sure and study.

Q Did you get a book entitled "God and the State"?

A Yes, sir.

BY THE COURT:

Is that "God and the State" referred to in the indictment?

BY MR. GILLESPIE:

Yes, sir. Published by the Watch Tower Bible & Tract Society, at page 18, the following paragraphs:

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different

from others of the world. Jehovah's Witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Those are the pamphlets and the paragraphs we intend to offer.

**BY MR. CLARK:**

Our objection to that is, it does not sufficiently identify the book; and he didn't sufficiently point out the page and the paragraph, and he took isolated passages from the books in question, which does not give the purport of the teachings of the booklets as a whole. I will agree, if he will agree to have the whole book read, or allow the witness to read the book to the jury, I will withdraw the objection; otherwise, I will not.

**BY MR. GILLESPIE:**

No, sir; I don't propose to offer the whole book. We have not got more than a month to finish ~~this~~ trial, and I am only referring to those passages we contend are disloyal, and I would rather proceed in my own way; I am offering the book and the passage I want to offer, and I am not offering anything else.

**BY THE COURT:**

I am going to overrule his objection, but for the life of me I don't see why you want it overruled.

**BY MR. GILLESPIE:**

If the Court please, in view of the fact that this indictment charges the distribution of this literature containing these particular paragraphs, and in view of the fact that the matter has to be presented to the jury, and the jury could convict on one and not on the other, on either one of them, I believe it is best for us to introduce the books.

BY THE COURT:

Let them be introduced as soon as the jury returns.

BY MR. CLARK:

I don't object to that, if they let read the whole book.

BY MR. GILLESPIE:

We will cover that when we get to it.

BY THE COURT:

All right; I will overrule the objection. Let the jury return.

The jury here returned by order of the Court, and in the presence and hearing of the jury, the following further proceedings were had and entered of record:

BY MR. GILLESPIE:

We offer in evidence the pamphlet entitled "Loyalty", published by the Watch Tower Bible and Tract Society; that is, we offer this sentence from this book on page 8:

"For the Christian to salute a flag is in direct violation of God's specific commandment."

I don't believe I identified this book.

Q State to the jury whether or not that is one of the pamphlets that Mr. Taylor was distributing?

A Yes, sir; this was in the last bunch.

BY THE COURT:

That is marked—

BY MR. GILLESPIE:

Let this be marked Exhibit "1".

Said pamphlet was identified by the Reporter as Exhibit "1", Witness Mrs. Bryant, and is in words and figures as follows:

BY MR. GILLESPIE:

I hand you a book entitled "God and the State". State to the jury whether or not that is one of the books that was distributed by Mr. Taylor and secured by you?

A Yes, sir; we bought this in the bunch where there were

twenty-two; and these are the two books he referred to and wanted us to study them especially.

Q And this pamphlet entitled "Refugees"—

A (Interrupting) Yes, sir; we got this one with the blue book the first time he came.

BY MR. GILLESPIE:

I want these three books identified as Exhibits "1", "2" and "3", respectively.

Said documents were identified by the Reporter as Exhibits "1", "2" and "3" respectively,

Witness Mrs. Bryant.

BY MR. GILLESPIE:

We offer, if the Court please, the following paragraph from the pamphlet entitled "God and the State", on page 18, which reads as follows:

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christian Christians are in a class different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Q Was this one of the books that Mr. Taylor told you to study specifically?

A Yes, sir.

BY MR. GILLESPIE:

Now, we offer paragraph on page 6 of the pamphlet marked "Refugees"—pages six and seven, which reads:

"All nations of the earth today are under the influence and control of the demons . . . "

"All the nations suffer the same fate or come to the same end, because all nations of earth are on the

wrong side, that is, on the losing side. All of the nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God. . . . all are under the control of the invisible host of demons."

Q Did you read those passages, Mrs. Bryant?

A Yes, sir.

Q Do you know of any other parties to whom this literature—among whom this literature was distributed?

A Mrs. Denson and Mrs. Joyner.

Q Now, I believe you stated you were at your home and at Mrs. Joyner's home when these oral statements were made to you and when these books were distributed to you? Is that true?

A Yes, sir.

Q And your home and Mrs. Joyner's home are both in Madison County, Mississippi, are they?

A Yes, sir.

Q You live near the edge of Canton here, on old Highway 51? A Sixteen.

BY MR. GILLESPIE:

That's all.

BY THE COURT:

For my own mind, what date does she fix this as?

BY MR. GILLESPIE:

She fixes it as the latter part of May of the first meeting, and the 2nd day of June for the meeting at Mrs. Joyner's, in this year. She testified to that.

#### CROSS EXAMINATION

BY MR. CLARK:

Q Mrs. Bryant, when did you first see Mrs. Taylor?

A The latter part of May, when he came to our home.

Q Will you tell as near as you can what took place at that time?

A Well, he brought a little Victrola and played us a rec-



ord, and then he had a magazine he wanted us to take for a dollar, but we didn't take it; we bought the Blue Book and the "Refugees" with the Blue Book. He told us he was not selling books to make a living, he was selling them to teach people the right way to live and how to bring their children up.

Q You say he brought a Blue Book. Is this the book he brought at that time?

A Yes, sir.

Q And did you get those books at the time?

A I got the one entitled "Refugees" with that Blue Book.

Q Got the book entitled "Refugees" with that Blue Book?

A Yes, sir.

BY MR. CLARK:

I would like to introduce this book "Children".

BY MR. GILLESPIE:

We object to the introduction of this book, because it is not pertinent to the charge.

BY THE COURT:

You can have the book identified, but unless you show some further cause I would sustain the objection. I cannot see the relevancy of it. The Encyclopaedia would be as relevant as that book.

BY MR. CLARK:

Identify this as "Children", published by the Watch Tower Bible and Tract Society, 117 Adams Street, Brooklyn, New York.

Said book was identified as Exhibit "1" on cross examination, Witness Mrs. Bryant.

Q Did he give you any questions on it?

A No, sir.

Q What were the first words on that occasion he stated to you?

A The first time he called at my home?

Q Yes.

A He said he had a record that he wanted to play for us.



Q Did he mention Hitler in any way?

A No, sir; not the first time.

Q Did he mention Mussolini of Italy, or the Pope of Italy?

A No, he didn't; he did in the record; he talked about the dictator.

Q Was he in favor of the dictator?

A The last time, he came to Mrs. Joyner's, he must have been in favor of them.

Q How about the first time?

A He didn't mention much about it the first time, only he wanted me to read those two books and follow them, and live right and teach our children as those books said.

Q Isn't it a fact this "Children" book was the one he mentioned for you to study and read in particular? Isn't it a fact he did tell you that's the book he wanted you to study? Isn't that true?

A He said that one too.

Q Has anyone told you that Mr. and Mrs. Taylor are against the Government?

A No, sir; but they talked like it in the home of Mrs. Joyner.

Q But what about at your home?

A They didn't say much about it, only what I told you.

Q Tell me just what they did say?

A When at Mrs. Joyner's?

Q At your home?

A He just told me to take those two books, and that he wasn't selling those books to make money or make his living; said he was selling them to teach the people the right way to live, and how to teach their children.

Q That was in connection with this book?

A That one too.

Q Who first told you these people were against the Government, Mrs. Bryant?

A Well, we had the books there, and I was at Mrs. Joy-

ner's when I found it out, and Mr. O'Neal come over there and he told us what those books were.

Q What did he—Mr. O'Neal was the first one?

A Yes, sir.

Q What did he say they were?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection will be sustained.

BY MR. CLARK:

Q Well, did anybody tell you they were Nazi agents or German agents?

A Sir?

Q Did anybody tell you they were German agents—did they tell you or anybody else?

A No, they didn't tell me.

Q Well, did anybody tell you?

A No.

Q Did anybody tell you they were not Christian people?

A No.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection is sustained; that would be hearsay.

BY MR. CLARK:

Q Did Mr. Taylor tell you, Mrs. Bryant, that he was a minister or preacher of the gospel?

A He said he was preaching the Lord's word.

Q Did he quote any of the Bible passages while he was at your home?

A He might have.

Q Well, would you say he did or didn't?

A He quoted a few.

Q About how long did he stay there?

A About twenty minutes.

Q Did you invite him back to your home?

A No, sir.

Q There was nothing said that would make you think he was disloyal at that time?

A I wasn't thinking anything about him being disloyal the first time he came.

Q How many books and booklets did he have besides those, did he have this one?

A The first time he came?

Q Yes.

A Those were the only two I bought.

Q Those two?

A Yes, sir.

Q Where did you get those two?

A I bought those at Mrs. Joyner's the last time he came.

Q Had you ever heard of Jehovah's Witnesses before Mr. Taylor came there?

A Yes, sir.

Q Who else was present at that time, at the time of the first visit he made?

A My husband.

Q Has he ever been in your home any since?

A No, sir.

Q Did he mention the war the first time?

A Yes, sir; he said this was the last war.

Q The last war?

A Yes, sir.

Q Did he say who would win the war?

A The last time he came, he said Hitler would win the war—said he would rule.

Q Did he say he would win the war?

A He said it was the last war; if he was going to rule it would have to be.

Q That is something you concluded, isn't it, that it would have to be that he would win the war?

A If it was the last war and he was going to rule it would

have to be.

Q Did you believe what he said about it?

A The first time?

Q Did he say that the first or last time?

A No, sir; the last time.

Q The first time, did you believe some of the things he said were true?

A Yes, sir; I believed it to be true; but he said the first time this was the last war, the first time he came to my home.

Q Did he say it was mentioned in the Bible?

A I just don't remember.

Q But you do remember he said it was the last war?

A Yes, sir.

Q But he didn't say Hitler was going to win the war then?

A No, sir; he didn't say it then.

Q How come him to mention it at the last place? How did he approach you at that time? Now, we will leave your first visit—forget that, and come up to Mrs. Joyner's house, and I am asking you about that. I don't want to confuse you, little lady?

A You won't.

Q I want to know the truth. How come him to mention Hitler at all there?

A He was talking about the war.

Q Tell us the words he said then just before he came up to Hitler?

A I don't remember exactly, for I was listening to hear him say Hitler was going to win.

Q You were figuring he was going to say that?

A Yes, sir.

Q Somebody told you he was going to say that?

A Mr. O'Neal told us these books were against our Government, the first ones he sold.

Q And you were listening for that, but you don't remember anything he said just before that?

A No, sir; I don't remember what he said.

Q Do you remember anything just after it?

A He said Hitler would rule, and he wouldn't have to come here to do so.

Q What else did he say?

A He said the sooner the people quit bowing down and saluting and worshipping the Flag and the Government, the sooner we would have peace.

Q And what else did he say?

A He said that we looked upon the Flag and the Government as something sacred.

Q And what else did he say?

A I believe I have told you about the most interesting points.

Q Now, any other points he said about anything else besides those things there that day? What else did he say, that that is in the indictment or anything else?

A I can't remember everything.

Q You just know what is in the indictment?

A Yes, sir.

Q Who else heard him make those statements?

A Mrs. Joyner, and his wife, and there were two children there.

Q How come Mr. Taylor up at Mrs. Joyner's?

A He said he came there to comfort her, as she lost her son in the war.

Q Who said that?

A Mr. Taylor and Mrs. Taylor, both.

Q Said they came to comfort her?

A Yes, sir.

Q And isn't it a fact he discussed the Bible at length with you there that day? Didn't he say—quote Daniel 2:44?

A I don't know.

Q See if he said this: "In the days of these kings shall the God of Heaven set up a kingdom"?

A I don't remember.

Q "And he will break in pieces and consume all of those kingdoms, and his kingdom shall stand forever"?

A I don't know.

Q But you do very well remember the others?

A Yes, sir; I remember it.

Q Did he tell you that the Bible taught Hitler would rule?

A No, sir.

Q Yes, you are sure he said to comfort her, and yet told her Hitler would win the war?

A He said they were over there being shot down for nothing.

Q That's something else you remember now?

A Yes, sir; he said it was wrong for the President to put the boys in uniform and send them across to be shot down for nothing at all.

Q I thought a while ago you said those were all the things you remembered? Those things were added on to that?

A That's what I told the jury a while ago.

Q Who else heard him make that statement?

A Mrs. Joyner and his wife.

Q And who else?

A Myself.

Q And anybody else?

A No, sir.

Q Did you invite him to your home?

A No, sir.

Q You never invited him to your home?

A No, sir.

Q How long was he there before he talked about the war—when he went over, I mean, at Mrs. Joyner's house?

A Just a few minutes.

Q Did he offer you any card, or any little yellow card?

A He didn't me.

Q Did he play a phonograph record there?

A No, sir.

Q Didn't play any phonograph at Mrs. Joyner's?

A No, sir.

Q Did he play any at your house?

A Yes, sir.

BY MR. CLARK:

I want to introduce that phonograph record, to see if that's the one he played.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection will be sustained.

BY MR. CLARK:

Q Did he play any records at Mrs. Joyner's?

A No, sir.

Q You have heard quite a few people tell you that Jehovah's Witnesses are disloyal lately besides Mr. O'Neal?

A They haven't said anything about Jehovah's witnesses being disloyal—what they are preaching against our Government.

Q Except Mr. O'Neal?

A There have been several I have talked to.

BY MR. GILLESPIE:

I don't think it makes any difference who she had heard say these things.

BY THE COURT:

She has already answered. I think the objection would be sustained, but she has already answered.

BY MR. CLARK:

Q Did you read the book "Refugees" through?

A I read some of it; I didn't read all of it.

Q What page was that disloyal statement at? Will you read to the jury the first page of it?

A What do I want to read that for?

Q Well, I ask you to read it?

A I don't need to read it.

Q Well, when Mr. Taylor first came to your house, did you become against him that time, or was it later?

A Sir?

Q Did you become prejudiced against Mr. Taylor and the books the second time or the first time?

A I had already become against him before he came the second time.

Q What caused that?

A Because of what he says against our government.

Q Did you construe the book—did it make you against the Government? Did it make you feel against the Government?

A Me against the Government?

Q Yes.

A No, sir.

Q Did it make you respect the Flag less?

A No, sir.

Q Did it make you love the Government more or less when you read these books?

A I loved it more.

Q Up at Mrs. Joyner's, can you tell—I don't know whether I got this to you a while ago or not—but can you tell exactly what Mr. Taylor said before he began discussing Hitler up at Mrs. Joyner's? Were you there when he came in? A Yes, sir.

Q Did Mrs. Joyner invite you?

A No, sir. I just live across the road from her, and go there every day.

Q And you had gone over there?

A Yes, sir; before they came.

Q And when they came in, what did they say the first thing?

A Said they came over to comfort her.

Q And that was all?

A About her son being killed—wanted to talk to her; and he said he had these books that he showed us.

Q How many books did he have there on that occasion? Any of these?

A Yes, sir; I have got twenty-two of them, and she has



got twenty-two.

Q And yet you mean to tell the jury—Did you mean to tell the jury a while ago you got against the Government before you went up there?

A Against the Government?

Q Or against these books before you went up there?

A Yes, sir; I was against them.

Q How come you to take the 22?

A Because I was asked to take them.

Q Who asked you to take them?

A I don't believe I will tell you.

Q Yes; I want you to tell who asked you to take them?

A Mr. O'Neal and Mr. Cauthen.

Q Who is Mr. O'Neal?

A Mr. Vallia O'Neal, is all I know.

Q Do you know whether he is an official in the American Legion or not?

A Yes, sir; he certainly is.

Q What is he? What office does he occupy, if any, in the organization, or the county officials in this county, if you know?

A Who, Mr. O'Neal?

Q Yes.

A I don't guess he occupies any.

Q What place does Mr. Cauthen occupy?

A County Attorney.

Q And you were sent up there to get these books? Is that right?

A I wasn't sent up there; I was already up there.

Q Well, when had they told you to get those books?

A When we got those others and found out what it was, they told us to get them all—all that we could.

Q All that you could?

A Yes.

Q And then is that when you got the 22—the two bottom ones and twenty other ones?

A Yes, sir; the last time.

Q Did you get this book—a book like that—at that time?

A I don't know whether there was one in the bunch like that or not.

Q You don't remember seeing that one before?

A No, sir.

Q Where are those other twenty?

A I turned them over to Mr. O'Neal.

Q Mr. O'Neal has got them? Is Mr. O'Neal a minister?

A No, sir.

Q Is he a Catholic?

A I don't know what he is. I don't think he is.

Q How come Mr. Taylor to just jump right out and tell you about Hitler? Can you explain that?

A He just led up to it the last time when we was up to Mrs. Joyner's. He just led up to it in his conversation.

Q Isn't it a fact he told you, little lady, the Kingdom of God was coming to the world; that there would be a kingdom of righteousness here?

A I don't remember.

Q You don't remember he told you there would be a Theocratic government here established on the earth, and that this would be the last war?

A He said this was the last war.

Q And didn't he say that God would set up a Kingdom here?

A I don't remember what he said.

Q But you do remember that he said Hitler would win the war?

A Yes, sir.

Q You have heard other people discuss the war?

A Yes, sir.

BY MR. CLARK:

[BY MR. GILLESPIE:]

We object to that; we are not trying anybody else.

BY MR. CLARK:

I would like to ask if she can remember what others said about the war.

BY THE COURT:

I will overrule the objection on the ground that he may have a right to test her memory.

BY MR. CLARK:

Q Do you remember what Mrs. Taylor said in regard to the war?

A She didn't have much to say. He was doing most of the talking.

Q Did she say anything about the war?

A She put in every once in a while.

Q What words did she put in?

A I don't know; mostly she was helping talk about the price of the books.

Q How much did she get for the 22 books?

A Thirty-five cents.

Q 22 little books for 35 cents?

A Yes, sir; she said they were originally a nickel a piece.

Q How much did she get for this book, and those two little books there?

A I think they sold for 25 cents.

Q The two together?

A Yes, sir.

Q Could you be mistaken about which one of them said Hitler would win the war?

A No, sir; he said it.

Q Did he say, little lady, that the people ought not to bow to the Flag?

A He said it was wrong. He said we looked upon the Flag and our Government as something sacred.

Q And who did he think we should worship, Hitler?

A I don't know; I guess so.

Q You don't remember everything in ordinary conversation you hear people say, do you?

A No, sir; I don't remember all he said.

Q But you do remember all those words?

A Yes, sir; I remember those.

Q And you know those are the exact words he said?

A Yes, sir; as near as I can remember.

Q Could you be mistaken at all?

A No, sir.

Q Could you have misunderstood what he was trying to say to you?

A No, sir; for I was sitting there listening for these things he said.

Q You were sitting there listening for these things he said?

A Yes, sir.

Q Did Mrs. Taylor say that we worshipped the Flag?

A She didn't have much to say about it.

Q Did she say a thing against the Government?

BY MR. GILLESPIE

We object to what she said.

BY MR. CLARK:

That is to test her memory.

A What did she say exactly?

A I don't remember exactly.

Q Did she tell you that you worshipped the Flag?

A No, sir; she didn't tell me I worshipped it.

Q Did she tell either of you ladies you were flag worshippers?

A I don't know; she didn't at Mrs. Joyner's.

Q Did she say anything about the boys that lost their lives at Pearl Harbor?

A Yes, sir.

Q What did she say?

A She was talking about them; she said that it would hurt German mothers just as bad as it would these mothers here for losing their sons.

Q Did she say that the boys would—they would see them

any more, or anything like that?

A They said they would see them some more; that when this was over they would come back to earth and live like they did before they were killed.

Q Did she say those exact words?

A Yes, sir.

Q That they would come back to earth and live like they did before they were killed?

A Yes, sir.

Q You are sure those are the words they said?

A Yes, sir.

Q Which one said that, Mr. Taylor or Mrs. Taylor?

A Both of them said it.

Q Which one of them said that first?

A Mr. Taylor.

Q And then Mrs. Taylor?

A Yes, sir.

Q Corroborated it?

A Yes, sir.

Q Did they say those words in the presence of Mrs. Joyner?

A Yes, sir.

Q And who else?

A That's all; just us two.

Q Nobody was present but you and Mrs. Joyner at that meeting?

A No, sir.

Q Wasn't this just a general discussion about religious matters?

A Not exactly; they were talking more about the war than most anything.

Q Well, didn't that talk about the war grow out of the fact that the boys had been killed?

A Well, he said he come there to comfort her about her son being killed. He never offered to pray while he was there in her home to comfort her; and if I am not badly mis-

taken, he didn't read many passages from the Bible.

Q But he did read some passages in the Bible?

A I don't remember him reading a one there.

Q But he did say they would come back alive some day?

A Come back here on earth and live like they did before they were killed.

Q He told you the Bible taught that?

A He didn't tell me the Bible taught it either.

Q Did he have a Bible with him?

A Yes, sir; he had a Bible just sitting there turning through it.

Q These statements that— who taught you these statements— who first repeated those statements to you that you allege Mr. Taylor said? Where did you first hear those statements?

A Where did I first hear them?

Q Yes.

A I heard him say them.

Q Who else said them after he said them?

A Those statements I said?

Q Yes.

A I just said them myself, about him saying it; we talked over it.

Q Who did you first tell those things to?

A My husband.

Q Who else did you talk to about it?

A We talked about them to Mr. O'Neal.

Q And then Mr. Taylor and his wife were arrested and came to the preliminary hearing— that happened next?

A I guess so.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. T. K. JOYNER was hereupon called as a witness on behalf of the State, having been first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. CAUTHEN:

Q You are Mrs. T. K. Joyner?

A Yes, sir.

Q Mrs. Joyner, where do you live?

A About two miles out from the Old Sharron Road.

Q That's in Madison County, Mississippi?

A Yes, sir.

Q Mrs. Joyner, do you know the defendant, Mr. Taylor?

A Yes, sir.

Q About when, Mrs. Joyner, did you first see the defendant? A It was the second day of June.

Q Where was he, Mrs. Joyner?

A He came to my house, he and his wife and little girl.

Q Now, Mrs. Joyner, just tell the jury in your own words, what he did when he came to your house?

A Well, he came in and said he wanted to talk with me; and they came in and sat down and he began to talk, and looked through the Bible; he didn't read any in the Bible, but just turned through it, and talked; and told me that the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to salute the Flag; that we just worshipped our Government and our Flag, and looked on it as something sacred; and that it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there.

Q Mrs. Joyner, was your son killed, and where was he?

A He was a radio operator in a B-18 Bomber at Hickman Field, and was killed December 7th, as he was getting ready to go out.

Q That was at Pearl Harbor?

A Yes, sir; at Pearl Harbor.

Q And he was at that time in the United States of America air Force?

A Yes, sir; had been there two years and ten days.

Q Did he sell you any books, Mrs. Joyner?

A Yes, sir; he sold me 22 books.

Q Are these— I will hand you one book "End of the Axis Powers—Comfort All that Mourn", published by the Bible Tract Society, Incorporated, International Bible Students Association— did he sell you that book, Mrs. Joyner?

A He did.

BY MR. CAUTHEN:

I will introduce that as Exhibit "1" to Mrs. Joyner's testimony, this part I am going to read:

BY MR. CLARK:

I want to renew the objection for the same reason I did to start with.

BY THE COURT:

I will overrule the objection.

BY MR. CAUTHEN:

Q Is this passage in the book that you had identified: "Both of the 'kings' fight desperately for world domination." And then starting here: "Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of The Theocracy they must hold themselves entirely aloof from warring factions of the world?"

A It was.

Q Was that in the book?

A Yes, sir.

BY MR. CAUTHEN:

We will introduce that part of the book that was read



in evidence as Exhibit "1" to Mrs. T. K. Joyner's testimony. That is on page 16.

Said book was identified as Exhibit "1", Witness Mrs. Joyner, and is in words and figures as follows:

Q Mrs. Joyner, I have a book here entitled "God and the State"—

A Yes, sir.

Q It was published by the Watch Tower Bible and Tract Society, Incorporated, International Bible Students Association; where did you get that book, Mrs. Joyner?

A I bought it from Mr. Taylor.

Q At what time did you buy it?

A On the morning of June 2nd.

Q What year, this year?

A 1942.

BY MR. CLARK:

I want to object to that for the same reason.

BY THE COURT:

Let the objection be overruled.

BY MR. CAUTHEN:

Q Mrs. Joyner, I read a passage on page 18:

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Is that passage in this book entitled "God and the State"?

A Yes, sir.

BY MR. CAUTHEN:

We want to introduce as Exhibit "2" to Mrs. Joyner's testimony the part of the book "God and the State" that has just been read.

Said book was identified as Exhibit "2", Witness Joyner, and is in words and figures as follows:

Q Mrs. Joyner, did he sell other books to you?

A Yes, sir.

Q Of this nature?

A Yes, sir.

Q Do you know of other people he sold books to besides yourself?

A He sold them to Mrs. Bryant in my house.

Q Do you know of anybody else he sold them to? I mean besides you and Mrs. Bryant?

A He sold them to Mrs. Denson.

BY MR. CAUTHEN:

Take the witness.

### CROSS EXAMINATION

BY MR. CLARK:

Q This is Mrs. Joyner?

A Yes, sir.

Q How many times, Mrs. Joyner, did Mr. and Mrs. Taylor come to your home?

A Well, Mrs. Taylor came once— I mean twice, and Mr. Taylor once.

Q When Mrs. Taylor came, did she say anything against the Government?

A Well, the first time she didn't.

Q Did she say anything in favor of Hitlerism, or Hitler?

A Not the first time; it wasn't mentioned.

Q Did she ever say anything in favor of Hitler, or Hitlerism, or totalitarianism?

A She asked more than once to study this literature and to believe in it.

Q What literature was she referring to?

A This.

Q Did she offer you this book?

A Yes, sir; and another one we had named "Hope".

Q Did you buy them from Mrs. Taylor or Mr. Taylor?

A Mrs. Taylor.

Q The first or last time?

A The first time.

Q And this one the first time too, was it?

A It may have been in that stack of books. I bought the last time; I don't know. I didn't read all the books. There were twenty-two I bought from Mr. Taylor.

Q It could have been in there?

A It could have been; I know I got it from Mrs. Taylor.

BY MR. CLARK:

I would like to introduce this as showing what he was really trying to teach there.

BY THE WITNESS:

I got it from Mrs. Taylor.

BY MR. CLARK:

Q I thought you said from Mr. Taylor?

A No; I said I didn't know whether it was in the bunch of books I got from Mr. Taylor; but I got that and the Blue Book from Mrs. Taylor. I didn't read them all, but it could have been amongst them.

BY MR. CLARK:

I want to introduce it as a possible one.

BY MR. GILLESPIE:

We object to it.

BY THE COURT:

I sustain the objection. You may have the book identified.

BY MR. CLARK:

Well, I will have it identified.

Said book was identified as Exhibit "2a", Witness Mrs. Joyner, on cross examination.

Q Did Mr. Taylor— What did he say when he first came in when you and Mrs.— who was the lady?

A Mrs. Bryant.

Q When she was over there that afternoon, did you invite her to come there?

A No; she lives across the road from me; she runs in and out all day long.

Q Did you tell her the Taylors were coming back over there that day?

A No; when we seen them stop at her home first, and I told her she needn't get mad, they would come there; Mrs. Taylor had told me they would come back.

Q She told you she would come back?

A She didn't say what day, but that she would come back.

Q Did you object to her coming back?

A No; I didn't object to her.

Q Did they both come in together?

A All three of them— all came in together.

Q The little girl, Mr. Taylor and Mrs. Taylor?

A Yes, sir.

Q Just tell the first thing they said? Did they offer you any little yellow card?

A Yes. I don't know whether it was yellow, but it was a little card.

Q Something similar to that?

A Let's see— I don't know whether that's it or not. No, this isn't it.

Q But it is shaped like that?

A It was a little leaflet, and had a little row of about four, or I would say five, numbers in here, and each one telling you how to study that literature.

Q Maybe that is what you are talking about? There are questions or references to pages?

A This isn't either.

Q But something similar to that?

A Well, something— it wasn't just like that.

Q Then, the purpose of his visit was to help you study the literature?

A I don't know; they didn't say the purpose of their visit.

Q What did they say they came around for?

A They just came in, and I told them to be seated, and Mr. Taylor had his Bible in his hand, and he began to turn through the Bible and talk.

Q What is the first thing he said?

A Well, he told about the beast with the seven heads and ten horns.

Q Who did he say that beast was with seven heads and ten horns was? Did he tell you who that was?

A I don't know whether he told me who that was.

Q Didn't he say that pictured the Roman Catholic Hierarchy?

A I don't know.

Q And did he tell you that beast pictured Hitler?

A No; he didn't say that.

Q Totalitarianism?

A No, he just told me about it. I had read it in the Bible a good many times myself.

Q He told you that was totalitarianism, didn't he?

A No; he just told me that.

Q Didn't he tell you totalitarianism would rule?

A No; he told me Hitler would rule.

Q Well, Hitler is a totalitarianism rule, isn't he?

A He just said Hitler; he didn't say totalitarianism.

Q Did he tell you Hitler would win the war?

A No; he said this would be a land where Hitler would rule.

Q He didn't say Hitler would win the war?

A No, he said he would rule.

Q Isn't it a fact he read to you: "In the days of these

last kings shall the God of Heaven set up a kingdom, and it shall break in pieces and consume all these kingdoms, and it will stand forever”?

A No; he didn't read anything.

Q Didn't he quote that to you from the Scriptures?

A He may have quoted it; he didn't read it.

Q Didn't he tell you further we prayed for “Thy kingdom come, Thy will be done on earth as it is in heaven”?

A He didn't mention prayer in no way.

Q You are sure of that?

A I am sure. He said he come to comfort me, and didn't say a word about prayer.

Q Didn't he tell you your boy would come back from the dead?

A He said he would come back and live with us forevermore.

Q Didn't he then quote “Thy kingdom come, and Thy will be done on earth as it is in heaven”?

A He did not.

Q You know that is in the Bible?

A Sure, I know that.

Q And that conformed with what he told you, didn't it?

A He didn't say it; he didn't mention prayer.

Q But he told you your boy would come back, and you would see him again?

A Yes.

Q He said he would be resurrected, didn't he?

A He said he would come back to earth, and heaven would be on earth.

Q And then he bursted out in a statement that Hitler would bring a kingdom here on earth?

A No, sir; he said Hitler would rule; he didn't have to come here to do it.

Q Didn't you tell us the other day over there that he told you Hitler would be the one that would bring the kingdom?

A No; I didn't tell you that. I said he said Hitler would rule.

Q Mrs. Joyner, didn't you invite him back?

A No. They said they wanted to come back. I didn't say a word. I let them make their plans. They said they wanted to come back—come when Mr. Joyner was at home, and asked me what time, and I told them he usually got in about nine-thirty; and they made their plans to come back about eight. I didn't ask them to come back; they made their plans to come back.

Q But you didn't ask them out?

A No; I didn't ask them out.

Q Did you ask them out when they began to tell about Hitler going to rule?

A No; I let him talk.

Q Didn't you say, "Listen! you can't talk against my Government in favor of"—

A (Interrupting) No.

Q You didn't say that?

A I wanted to see what he would tell.

Q Did somebody tell you to get all you could off of them?

A No; but I was interested enough in our Government and our Flag to want to know what he was representing.

Q Had anybody suggested to you that you— that they were spies or German agents?

A No; but I had heard what the Jehovah's witnesses were; I read about it in the papers.

Q And you figured the whole bunch were against the Government?

A That's the idea you get.

Q You got it out of the papers?

A I had read about it in the papers, and I wanted to see for myself; I didn't want to take the other fellow's word for it.

Q Did you read any of these books?

Q I read some of it; I didn't read them through.

Q Will you read a passage in each one— I believe you said you got "God and the State"; will you read some passages there you think—

A (Interrupting) Well, I don't know that I read it that close enough to tell. It says: "Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Q Read the next paragraph, please ma'am?

A (Reading): "Children who have been reared and taught in the nurture and admonition of God's law and who, because they are in a covenant to do God's will and conscientiously attempt to obey God, refuse to indulge in the ceremony of saluting any flag and for that reason are expelled from school and denied the right of education, what shall they do? The parents of those children, who have obeyed God's law to bring up their children in the nurture and admonition of the Lord, are punished because they do not compel their children to violate their conscience and to violate God's law, and the parents are deprived of their liberty and right to have their children educated in the schools, as the law requires. What shall they do? Many children and many parents in the United States find themselves confronted with this important question."

Q Was that the next paragraph?

A I am not a very good reader.

Q Which one did you read?

A This one.

Q You read this one first?

A Yes, sir.



Q You might read the rest of what you didn't read down there.

A (Reading): "The reason that such flag saluting is a violation of that commandment is that the salute attributes salvation to the state, which the flag represents, thus making the state a mighty one, or a 'god', whereas 'salvation belongeth alone to Jehovah, the Almighty God', and to none other. Psalm 3 chapter and 8 verse. Jehovah's witnesses conscientiously believe the Word of God and that their violation of their conscience and the violation of God's commandment would mean their certain destruction; as it is written: 'For Moses truly said unto the fathers, A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people.'" Acts 3 chapter and 22 and 23 verses.

Q You might read in connection with this on the next page.

BY THE COURT:

When you come to your time to argue you will have the entire book. Suppose your next book would be the Bible and would start in at Genesis—

BY MR. CLARK:

We ought to get enough to get the purport of it.

BY THE COURT:

The jury will have the whole book in the jury room, and I see no use in taking up the time. If you have some paragraph there we will make an exception.

BY MR. CLARK:

Q Read on page 20, the first paragraph down to the middle of the page 21, of Exhibit "2" to Mrs. Bryant.

A You read that.

(Counsel for the defendant here reads as follows):

"Most of the men who had to do with laying the

foundation of the American government believed in God and relied upon His Word; but in recent years there has been a rapid falling away from faith in God and in the Bible, particularly so amongst those who have to do with governmental or public affairs. Today many of the lawyers and judges of the courts, as well as other public officials, entirely ignore the Word of God. There are some lawyers, however, who firmly hold to the fundamental principles relied upon by the nation, and who trust in God, and who believe that every man should be free to exercise his conscientious reverence and worship of God without interference, and that the conscientious and sincere belief of all should be respected and not interfered with. More than one hundred years ago the courts of America laid down the rule that the **INDIVIDUAL ALONE IS PRIVILEGED TO DETERMINE WHAT HE SHALL AND SHALL NOT BELIEVE, AND THAT THE COURTS HAVE NO RIGHT TO INTERFERE WITH BELIEF OR PRACTICE, EXCEPT WHEN THE PRACTICE ENDANGERS THE WELFARE OF OTHERS.** In 1784 Thomas Jefferson introduced in the Virginia Legislature a bill which he had prepared, the preamble of which written by him, reads as follows: 'That to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain profession of propagation of principles on supposition of their ill-tendency, is a dangerous fallacy which at once destroys all religious liberty. it is declared that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.'

The Gobitis case, which originated in Pennsylvania, aptly illustrates the point with reference to forgetting or ignoring God. The Gobitis parents are conscientious

Christians, in a covenant to do the will of Almighty God. They have brought up their children as commanded by the Scriptures, 'in the nurture and admonition of the Lord.' The children also consecrated themselves to God and entered into a covenant to do his will. The school board promulgated a rule requiring a daily practice of saluting the flag, and going through a certain ceremony in connection therewith. The Gobitis children, because of their conscientious belief that such flag saluting would be a violation of their covenant and a violation of God's law, asked to be excused therefrom and to remain silent during the ceremony. For this they were expelled from school. Suit was begun in the United States District Court, presided over by Judge Maris. That Court held that the flag-salute rule could not be enforced against the Gobitis children because of their conscientious belief in God and his Word, and in his opinion, amongst other things, he said: 'In these days, when religious intolerance is again rearing its ugly head in other parts of the world, it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachments.'"

Q Did Mr. Taylor tell you that the Christians would go to heaven, but that the earth would be made perfect also?

A He told me there were two divisions of people, one were the sheep and one the goats, and all people who studied this literature would be in the sheep class.

Q And the folks that didn't study it—

A (Interrupting) He didn't say, but I guess they would be goats; but he said I would have to study and learn this literature and I would be a sheep.

Q Did he tell you at that time you were a goat?

A No; but he said if I didn't study and learn this literature— I would have to study it to be a sheep.

Q Did he tell you Christians would go to heaven?

A He said heaven would be here on earth. He didn't say—he said we would stay here on earth.'

Q Didn't he tell you 144,000 Christians would go to heaven? A No.

Q And be associated with Christ Jesus as the elect?

A No; he didn't say that.

Q Didn't he tell you other people would live upon the earth, except these 144,000?

BY MR. POWELL:

We are bearing with our friend here, but I don't think he ought to ask every question in the dictionary.

BY MR. CLARK:

It shows what the man was doing there.

BY THE COURT:

He can testify to that, or other witnesses. It wouldn't matter what he was doing, I don't believe, if he was preaching this doctrine.

BY MR. CLARK:

Q What did you understand what the purpose of Mr. Taylor's visit?

A Well, he wanted me to learn that literature; wanted me to buy it first, and study it, and learn to worship according to the literature.

Q Did he say the literature or the Bible?

A He said literature; and he said to study it more than once.

Q Did he say to study it with reference to the Bible?

A No; he didn't say anything about the Bible.

Q Didn't mention the Bible?

A No.

Q Did he say a word about Hitler?

A He said Hitler would rule.

BY THE COURT:

We have been over that three or four times.

BY MR. CLARK:

Q What else did he say in connection with that?

A That was all. That was enough.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. W. B. DENSON was thereupon called as a witness on behalf of the Defendant [correctly, the State], having been first duly sworn, and testified as follows:

### DIRECT EXAMINATION

BY MR. POWELL:

Q Is this Mrs. W. B. Denson?

A Yes, sir.

Q Now, look at the jury, and talk so they can hear you, and tell the jury where you live?

A I live out a mile east, on the Country Club Road.

Q East of Canton?

A Yes, sir.

Q Mrs. Denson, did you ever see Mr. Taylor here?

Q Tell, when was the first time you ever saw him, and what conversation took place?

A He came to my home, I think, about the first of June or latter part of May, and wanted to talk with me about some literature.

Q Start again, now.

A He came to my home, and I met his wife out in the yard, and she wanted to know if they could talk with me, they wanted to bring me comfort.

Q Why did they want to bring you comfort? Did they say?

A Well, I lost a son at Pearl Harbor, and they wanted to talk with me about that.

Q Did they talk in that tone and about that speed?

A So, they said this country was clamoring for dictatorship, and it was wrong for the President to put uniforms on our boys and send them to fight the enemies; and they

said the sooner we quit bowing down to the Flag—to the Government and her Flag, that much sooner would we have peace; that we couldn't have peace as long as we believed in saluting the flag. And he said that Hitler would rule; he said that he wouldn't come here, he wouldn't have to, but he would rule; and he said there were just as many sheep—he divided the people as sheep and goats, the Jehovah's witnesses were the sheep and the believers; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, "You know you would hate to see a German mother lose her son as much as you would anyone else." But he told me to study the literature, and that I would get comfort from it.

Q Well, did they have any literature there?

A Yes, sir; they did. And I bought some of it.

Q How much did you pay for it?

A I don't remember whether it was 53 or 58 cents; but Mr. Taylor made a price to this literature, and his wife corrected it; she made another price, and asked me if I had some chickens and eggs that I would give her for that literature; but I didn't—I paid her money.

Q Do you know how many books you bought?

A I don't remember; but it was a stack—little books and a Blue Book. And Mrs. Taylor gave me instructions how to find things through those books.

Q How many times did they come to your house?

A Only one time.

Q Do you recollect whether these books "Refugees" and "Loyalty"—were those two of the books?

A Yes, sir.

BY MR. POWELL:

I want to introduce the whole book in toto.

BY MR. CLARK:

I make the same objection.

BY THE COURT:

I overrule the objection.

Said books were identified as Exhibits "1" and "2", Witness Mrs. Denson, and are in words and figures as follows:

BY MR. POWELL:

Q Mrs. Denson, please tell the jury whether or not in the book called "Refugees" there are these words on page 6 and part of page 7— did this Book "Refugees" have this in it:

"All nations of the earth today are under the influence and control of the demons. . . .

"All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God. . . .

". . . all are under the control of the invisible host of demons."

A Yes, and that was in his teachings, too.

Q I will ask you now please to look on page 8 of the book called "Loyalty", the front page thereof, the words "Whose servant?" "Saluting the Flag"—"Last days"— and see if these words are on page 8 of that book:

"But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment."

Is that on that page?

A Yes, sir.

Q You have testified here to this jury that they came there to console you; tell the jury what, if anything, Mr. Taylor had to say in regard to your boy, whether he was right or wrong?

A He said my boy was wrong, but no doubt he thought he was right, being where he was fighting the enemy, but it was wrong; that the President was wrong in putting a



uniform on him and putting him in that fight down there; but he said if I would have the faith and study and believe, my boy would come back and I would have the opportunity of teaching him again, just as I would have to follow his instructions and all these things to do right.

BY MR. POWELL:

That's all.

### CROSS EXAMINATION

BY MR. CLARK:

Q Mrs. Denson, this is page 17 and 16, where you were reading from?

BY MR. POWELL:

I was reading on page 6 and 8 of the other two books.

BY MR. CLARK:

Q Did you have this book?

A No; I have some like it.

Q In regard to the flag saluting—will you read two paragraphs on page—I will read it.

A Would you read it.

Q I will read it, and you can identify it as being in that book—it is page 17, paragraphs 1 and 2, of the book entitled, "God and the State", exhibit "2" to Mrs. Bryant's testimony. It reads:

"In the time of the apostles there were religionists in the same category as above mentioned, and concerning which the apostles wrote: 'For I bear them record that they have a zeal of God, but not according to knowledge. For they being ignorant of God's righteousness, and going about to establish their own righteousness, have not submitted themselves unto the righteousness of God. For Christ is the end of the law for righteousness to every one that believeth.'—Romans 10:2-4.

"The wrong is not in the flag, because the flag of the United States is the symbol of liberty and justice. The wrong is not in the salute, but, as to a conscientious



Christian, the wrong lies in compelling or attempting to compel that one, against his conscience, to violate God's specific commandment. As above stated, God has specifically emphasized his law, that no form of worship or reverence shall be given to any creature or thing, and to attempt to compel a person to violate his conscience and to violate God's commandment is absolutely wrong."

BY THE COURT:

Now, go ahead with the examination of the witness.

BY MR. CLARK:

Q Now, that book stated to you that you had that it was not wrong to salute the flag, didn't it?

A It was in there.

BY MR. POWELL:

The book speaks for itself. /

BY THE COURT:

She says if it was in there.

BY MR. CLARK:

It was in there.

BY THE WITNESS: I didn't keep up with you. I don't see that here.

BY MR. GILLESPIE:

It is in evidence, and it speaks for itself.

BY THE COURT:

If she says it is not in there, it is still in there, if it; if she says it is in there and it is not, it is not. I sustain the objection; and let's go on then with the case; you can have your argument with the jury and not with this witness.

BY MR. CLARK:

Q You stated that Mr. Taylor said it was wrong to salute the Flag?

A Yes, sir; he did.

Q Then, he taught contrary to what was read to you out of the book?

BY MR. GILLESPIE:

We object to that; the book speaks for itself.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q When he came into your home, how did he approach your home— how did he come into the house?

A Well, his wife asked if he could come in—if they could come in and talk with me, and she told him to come on in.

Q Did they play any record?

A No; they didn't play any record in my home.

Q Did they present to you a card of introduction?

A No; they had this literature to sell.

Q And did you invite them back? Did they ever come back to your home?

A No; they never did come back.

Q Were you there the day they were at Mrs. Joyner's, that day?

A No, sir; I was not.

Q Well, did he say anything— who was there and heard him talking about Hitler going to rule at your home?

A I was there, his wife, and little girl were there.

Q And how did he say that?

A He said that Hitler— wait, let me see— he said Hitler wouldn't come here, he wouldn't have to, but he would rule.

Q Did he mention the beast with seven heads and ten horns?

A Yes; he did; and I don't know— he stayed there about an hour and a half, and he talked continually.

Q Did he refer you to the Scriptures?

A I don't know whether he did or not. He turned through the Bible so much, it didn't sound like Scripture to me.

Q What he read, you didn't know whether it was Bible or not, or what he said?

A I don't think there was much Bible to it.

Q Did you tell anybody then about his stating Hitler

was going to rule?

BY MR. POWELL:

We object to what she told.

BY THE COURT:

What she told that did happen couldn't throw any light on it.

BY MR. CLARK:

Q Did you talk to anybody?

A I talked to Mr. Gillespie, and Mr. Cauthen, and Mr. Powell there today.

Q This is the first time you talked to them?

A No; I talked to some of them before.

Q Did you talk to Mr. O'Neal?

A Well, I consider I have talked to these three; I have given you their names.

Q Did you talk to Mr. O'Neal?

BY MR. GILLESPIE:

If you have, tell him.

A Yes; I talked to Mr. O'Neal.

BY MR. CLARK:

Q He asked you about it, did he?

A Well, we have talked about it some.

Q Did you protest against Mr. Taylor when he began talking about Hitler—in favor of Hitler?

A I just sat and listened to him.

Q You didn't protest at all?

A No; I sat and listened at him.

Q You didn't argue with him about it?

A No, sir; I didn't; there wasn't any argument taken place.

Q Did Mr. Taylor tell you that the President was wrong when he put the boys in the fight?

A Yes, sir; he told me he was wrong to put the uniform on our boys and send them to fight the enemies.

Q Did he explain why he was wrong?

A He said we would never get anywhere as long as we

saluted the Flag; he said we looked upon our Government and the Flag as something sacred.

Q Did he tell you it was wrong to look upon it as something sacred?

A He said it was wrong to salute the Flag.

Q Did Mrs. Taylor say anything about the flag salute—did she mention the flag salute?

A No; Mrs. Taylor talked some, but I am not going to say whether she said that or not; but she showed me how to find headings and helps in that book, and she did tell me it would hurt me as much to be a German mother and lose her son as anybody; and she certainly did tell me to study that literature and go by it.

Q Well, anything else she said—just her exact words—in other words, did she criticise the Government in any particular?

BY MR. GILLESPIE:

This is Mrs. Taylor, and she is not on trial.

BY MR. CLARK:

I wanted to see if we could refresh her memory.

BY THE COURT:

Ask her if she remembers anything else.

BY MR. CLARK:

Q Do you remember anything else Mrs. Taylor said?

A I don't know.

Q You don't know? Do you remember anything else Mr. Taylor said?

A Well, I don't know that I do right now.

Q Did anything he said to you, or did, either, cause you to have less respect for the flag?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I beg your pardon. What was the question?

BY MR. CLARK:

I asked her this question: Did anything he said or did,

his teaching there, cause her to disrespect the flag or disrespect the Government.

BY MR. GILLESPIE:

It is not a question of what she thought— well, I will withdraw the objection.

BY THE COURT:

Anything that Taylor did to cause you to disrespect the flag, or have disrespect for the Government— I will overrule that objection.

BY MR. CLARK:

Q Did that cause you to have any disrespect for our Government or our Flag?

A No, sir; it caused me to have more respect for our Government, and less for him.

Q In other words, then, his work didn't do any harm there at your place? Is that right?

A No, sir; it did not do any harm to my home.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

BY MR. GILLESPIE:

Formerly we introduced just passages from the two books entitled "End of Axis Powers", and "God and the State". We would like to offer those books in full.

BY THE COURT:

All right.

Said books were identified as Exhibits "1" and "2", respectively, Witness Mrs. Denson, and are made a part hereof.

BY MR. GILLESPIE:

We rest, your Honor.

Thereupon, the jury retired by order of the Court and in the absence and out of the hearing of the jury, the following proceedings were had and entered of record:

BY MR. CLARK:

Now comes the above named defendant in the above entitled cause, and files this his motion for a peremptory instruction at the close of the State's evidence and before the defendant offers any evidence, and as grounds for this motion says:

1

### ONE

The statute under which the indictment is drawn, known as House Bill 689 of the regular Legislative Session of 1942, is void on its face and unconstitutional because section 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of his rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and section 1 of the Fourteenth Amendment to the United States Constitution.

### TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session of 1942, is unconstitutional as construed and applied to the activity of the defendant because section 1 thereof deprives this defendant of his inherent rights of freedom of worship of Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is

unconstitutional because section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and section 1 of the Fourteenth Amendment to the United States Constitution.

#### FOUR

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to section 14 of Article 3 of the Mississippi Constitution and section 1 of the Fourteenth Amendment to the United States Constitution.

#### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of section 1 of the Fourteenth Amendment to the United States Constitution.

#### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to section 1 of the Fourteenth Amendment to the United States Constitution.

#### SEVEN

The State has wholly failed to offer any evidence what-

soever as to the defendant's guilt, and the undisputable evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

WHEREFORE the defendant prays that the Court sustain this motion for peremptory instruction, exclude all of the evidence offered by the State and instruct the jury to acquit the defendant and by their verdict say "We the jury find the defendant not guilty", and render a judgment dismissing the indictment and discharging the defendant with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

BY THE COURT:

Let the motion be overruled.

MRS. G. C. CLARK was thereupon called as a witness on behalf of the Defendant, having been first duly sworn, and testified as follows:

### DIRECT EXAMINATION

BY MR. CLARK:

Q Mrs. Clark, were you here at the preliminary trial?

A Yes.

Q In that hearing—that hearing was a sort of informal hearing—nobody was under the rule, and you heard the three women testify over there?

A Yes; the table was there, and I was sitting at that desk in the corner by the window.

Q Tell the jury there if there was anything mentioned about the Flag that day?

BY MR. GILLESPIE:

We object.

BY THE COURT:

The objection is sustained.

BY MR. CLARK:

Q Tell what they testified?



BY MR. GILLESPIE:

We object.

BY THE COURT:

Objection sustained.

BY MR. CLARK:

Q What did Mrs. Denson testify?

BY MR. GILLESPIE:

We object.

BY THE COURT:

Objection sustained.

BY MR. CLARK:

Q Well, did Mrs. Denson say these words:—

BY MR. GILLESPIE:

We object.

BY THE COURT:

Don't answer. Let him ask his question first.

BY MR. CLARK:

It is possible I haven't formed my question right. I wanted to bring out by her what was brought out in that hearing.

BY THE COURT:

I suspect I was sustaining these objections on other grounds of competency of this witness at this time to testify to this.

BY MR. CLARK:

You don't think she is justified at this time to impeach those—

BY THE COURT:

No; I don't think at this time she or anybody else is competent to impeach them on anything that was said or done at that trial.

BY MR. CLARK:

I am going to ask that Mrs. Clark read to the jury from the 1st up to the 15th page—

BY MR. GILLESPIE:

Is that a book in evidence already?

BY MR. CLARK:

Yes, sir.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

To read these books— it is true they are in evidence, but it will take my whole time to do that.

BY THE COURT:

I will grant you additional time. The jury would have unlimited time; they have got from now on until they quit; and you can read it when it comes time to make your presentation.

BY MR. CLARK:

Q All right. Mrs. Clark, I will ask you this: You have read these books in evidence— you have seen them there?

A Yes.

Q Is there anything in there that tends to—

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

Don't answer; but let him finish the question.

BY MR. CLARK:

Q Mrs. Clark, you have had— you are a preacher, are you?

A A sort of one.

Q Well, you have had— you have studied the Bible?

A Quite a bit.

Q And you have been—

BY MR. GILLESPIE:

We object to all of this.

BY THE COURT:

He may be qualifying the witness.

BY MR. CLARK:

Q And you have read— you are well versed in what those

books contain?—What they teach?

A These particular books?

BY MR. GILLESPIE:

Say if you are or not.

A You are talking about them you have introduced?

BY MR. CLARK:

Q Yes.

A Yes, sir.

Q Is there anything in there that teaches disloyalty to the government?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The jury will have to pass on that. As to a question of law I am the judge; but as to a question of fact the jury is the judge of that.

BY MR. CLARK:

I want to qualify her as a minister of the Gospel.

BY THE COURT:

You can qualify her as to being a minister of the Gospel.

BY MR. CLARK:

We are trying the question of disloyalty here.

BY THE COURT:

That's the question, but that is for the jury.

BY MR. CLARK:

Mrs. Clark, go back to the witness room.

(WITNESS EXCUSED)

BY MR. CLARK:

I want to recall Mrs. Joyner.

BY MR. GILLESPIE:

Now, the State has closed—I don't know what he is recalling Mrs. Joyner for. I don't think he has any right to further cross examine Mrs. Joyner.

BY MR. CLARK:

I want to ask her if she didn't testify to a certain thing.

BY MR. GILLESPIE:

We object to it as being to late to lay a predicate.

BY THE COURT:

It may be a little out of time, but that's all right.

MRS. T. K. JOYNER was thereupon recalled for further cross examination, having been previously duly sworn, and testified as follows:

### RE-CROSS EXAMINATION

BY MR. CLARK:

Q You were at the preliminary, were you not, Mrs. Joyner?

A Yes, sir.

Q Did you three women testify to these words—

BY MR. GILLESPIE:

We object to that.

BY MR. CLARK:

They were all in there together.

Q Did you testify to these words: That Mr. Taylor said Hitler would win the war and bring the kingdom?

A I said "Hitler would rule".

Q Didn't you say that at that trial, that Hitler would win the war and bring the kingdom?

A I couldn't have said that because he said Hitler would rule.

Q Did you say this: That our boys would come back from death and live with us?

A No; he didn't say from death; he said they would come back home and live with us forever, for heaven would be here on earth.

Q That's the words, then?

A That's not the way I said it.

Q Was it like he said it?

A I say he said "Hitler would rule; he wouldn't come over here; he wouldn't have to." Those are the exact words.

Q And you didn't say anything about the Flag that day?

A They didn't ask me. You remember they asked us very little that day.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. W. H. BRYANT was thereupon recalled for further cross examination, having been previously duly sworn, and testified as follows:

#### RE-CROSS EXAMINATION

BY MR. CLARK:

Q Mrs. Bryant, did you testify in the preliminary hearing when we had it in that corner the other day?

A Yes, sir.

Q And didn't you testify to these words: "Hitler would win the war and bring the kingdom"—that Taylor said that?

A No, sir; I said that he said Hitler would rule, and wouldn't have to come here to do so.

Q And didn't you say that our boys would come back from death and live with us?

A He said they would come back here on earth and live like they did before they were killed.

Q And did you say anything—did you testify—You didn't mention the Flag, did you, that day?

A Yes, sir; we talked about the flag.

Q And what did you testify that day about the flag?

A The same thing I did today.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. W. B. DENSON was theheupon recalled for further cross examination, having been previously duly sworn, and testified as follows :

### RE-CROSS EXAMINATION

BY MR. CLARK :

Q Mrs. Denson, you testified over here the day we had the preliminary trial or hearing in the case of Mr. and Mrs. Taylor ?

A Yes, sir.

Q And you there didn't testify to anything Mrs. Taylor said about the flag, did you ?

A There wasn't any questions asked us that day about that.

Q There was nothing asked any of you that day about the flag ?

A No, sir.

Q Didn't I ask you that— anything else he said ?

A You didn't ask me anything about what Mrs. Taylor said.

Q Well, about Mr. Taylor, then ? What did you testify in regard to the flag that day ?

A Well, he said we were wrong—we bowed ourselves down to the flag.

Q He said— in other words, he testified the same— you testified the same thing that day that you testified today ?

A I just answered the questions you asked me ; you didn't talk as much about it as you did today.

Q But you would say that's what you said— you are sure of that ?

A I am sure he said exactly what I said he did.

Q I am talking about over there in that testimony—what did you say he testified—that he told you that day—what did you testify that he told you that day ? Didn't you say this : That Mr. Taylor said that Hitler would win the war and bring the kingdom ?

A No; I did not say that. I said that he said "Hitler would rule; he wouldn't come here; he wouldn't have to, but he would rule."

Q And then didn't you also say that he said that our boys would come back from death and live with us?

A He said if we had the faith—if we studied and had the faith we should, and went on with this literature, that they would come back and we would have a chance to teach them.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

BY MR. CLARK:

I want to recall Mrs. Clark.

MRS. G. C. CLARK was thereupon recalled as a witness on behalf of the defendant, having been previously duly sworn, and testified as follows:

#### DIRECT EXAMINATION

BY MR. CLARK:

Q Mrs. Clark, were you at the preliminary hearing over there?

A Yes, sir.

Q Did Mrs.— tell what Mrs. Bryant testified to that day— well, they all three testified—

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

You will be confined to those things about which you laid the predicate.

BY MR. CLARK:

Q Did Mrs. Bryant, and Mrs. Denson and Mrs. Joyner testify about the same thing? Did their testimony agree over there?

A Yes, sir.

BY MR. POWELL:

Did their testimony agree with what they did the other day?

A Well, I didn't hear today's testimony.

BY THE COURT:

I think it is objectionable—go ahead; she has answered.

A (Continuing) At the preliminary, they all testified to the same thing.

BY MR. POWELL:

Wait a minute! We object to that; she didn't hear it today.

BY MR. CLARK:

I asked her did they agree that day in their testimony, or did their testimony agree that day.

BY THE COURT:

She answered and said they did.

BY MR. CLARK:

Q Now, did they testify Hitler would win the war and bring the kingdom?

A Yes, sir.

Q And that our boys would come back from death and live with us?

A Yes, sir.

Q Did they mention the flag that day?

A Absolutely not; the flag was not mentioned by either side that day.

BY MR. CLARK:

That's all.

#### CROSS EXAMINATION

BY MR. GILLESPIE:

Q You remember exactly, the identical language they used, do you, Mrs. Clark?

A Practically so.

Q And you say the words spoken to you by Mr. Clark, your husband, are the identical words they used at the preliminary trial?



A That's what they said he said, "Hitler would win the war, and he would bring these good times"; and they also said that he said their sons would be given back to them to live with them on the earth.

Q Said if they believed in these teachings?

A No; they didn't say that.

Q But they said that Taylor did say their sons would be brought back to them and live with them again and teach them?

A That they would be resurrected.

Q You didn't say anything about resurrection a moment ago?

A That was the word, "resurrection".

Q Will you please, ma'am, repeat exactly what they did say?

A I can't repeat the identical words, but I can the substance of it. I know they was positive about "Hitler would win the war."

Q Isn't it a fact they said Hitler would rule?

A No, he said Hitler would win the war.

Q Would win the war?

A Would win the war.

Q You are a Jehovah's witness yourself, are you not?

A No, sir.

Q You are not? You were asked are you a minister?

A Well, anybody that talks the Bible is a minister, don't you think so, of the Lord?

Q Are you an ordained minister, or do you mean you just teach?

A Yes, sir; I am a teacher by profession; have taught for nineteen years.

Q Do you teach this same literature?

A No, sir; I don't teach that literature.

Q And you are not a member—not a Jehovah witness?

A Not a member of any organization, except the Mississippi Educational; but I am by profession a teacher.

BY MR. GILLESPIE:

That's all.

(WITNESS EXCUSED)

R. E. TAYLOR was thereupon called as a witness in his own behalf, having been first duly sworn, and testified as follows:

# DIRECT EXAMINATION

BY MR. CLARK:

Q Your name is what?

A Ralph E. Taylor.

Q Where do you live at present?

A 318 East Academy Street.

Q In Canton?

A In Canton.

Q Speak out as loud as you can. Mr. Taylor, what did you— how long have you— what were your purposes in coming to this County, and when did you come?

A I came to town about three months ago to preach the gospel of the kingdom.

Q Speak loud enough so the jury and audience have your testimony, that they might hear. What do you mean by the gospel of the kingdom?

A The one that we have all been praying for in Matthew 6:10, "Thy Kingdom come, Thy will be done on earth as in Heaven."

Q Then, are you a minister of the gospel?

A Yes.

Q Have you an identification to that effect?

(Witness here hands counsel card)

BY MR. GILLESPIE:

May I see that, please.

(Counsel for the defendant hands card to District Attorney).

BY MR. CLARK:

I want to offer this in evidence, and ask that it be

marked as Exhibit "1" to the defendant's testimony.

Said document was identified by the Reporter as Exhibit "1", Witness Taylor, and is in words and figures, as follows:

Q When you went to either one of these ladies' houses, did you offer them that to read?

A No.

Q What is that card you hold in your hand?

A That's a card that shows I am an ordained minister.

Q What kind of ordination do you have?

A We have an earthly ordination of our organization as well as a scriptural ordination.

Q What is the scriptural ordination?

A Isaiah 61: 1, 2.

Q Quote it.

A Isaiah 61, 1 and 2: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison unto them that are bound:

To proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."

Q Any other scripture ordination?

A Isaiah 43, 9-12.

Q And any other?

A Matthew 24, 14 says: "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come."

Q And any more?

A There are some more scriptures that show how we work—Acts 20: 20, as well as Acts 5: 42, and Acts 3: 23, says if we do not preach the gospel we will be cut off from amongst the people. That is where Paul says "Woe is me, if I do not preach the gospel."

BY MR. GILLESPIE:

I object to those scriptures.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q Read the front of that card.

BY MR. GILLESPIE:

I object to that.

BY THE COURT:

The card has been introduced in evidence. Let's go ahead with the examination; you can read that to the jury.

BY MR. CLARK:

Q All right; read the first—

BY MR. POWELL:

We object to the reading of it.

BY THE COURT:

I think he can show that is directed to him, and who it is issued by.

BY MR. CLARK:

Q Who signed that for you?

A This is signed by the President of the Watch Tower Bible and Tract Society.

Q Well, who—that's the earthly ordination, is it?

A That's right.

Q And what about—and you just mentioned your authority from God?

A That's right.

Q So, has the Government of the United States recognized you as an ordained minister?

A That's right.

Q How are you recognized in that?

A I am recognized as such by the Selective Service Board, is one thing.

Q What class did they place you in?

A 4-D.

Q How long have you been preaching, Mr. Taylor?

A Twenty years.

Q Have you served in the army since then?

A Yes.

Q How many years did you serve in the army?

A I was in a little less than two.

Q Now Mr. Taylor, you heard the evidence as given by the ladies here, Mrs. Joyner. I believe it was at Mrs. Joyner's house; will you tell as near as you can tell the words you said there at Mrs. Joyner's, your purpose there, that the jury might know what you were doing there—your purpose and intent?

A That would be quite easy, for we have been doing that full time for eleven years. I approached the house at Mrs. Joyner's on invitation of my wife; she called first, and she says, I would like for you to go in and meet her and talk to her; you are a man; they will listen to you better than a woman, and you can tell them more than I can about it. So, I went in and took up kinder where my wife had been talking to her before, concerning the kingdom, and that's all we ever talked about. Incidentally, I explained to her that there was the three worlds mentioned in the last chapter of Peter—Second Peter, the one before the floor [flood] the present world, and the world to come; and that the Scripture indicated we are about to the time for the change over from the present world for the world we have been praying for, "Thy kingdom come". And she spoke to Mrs. Taylor the first visit concerning what was uppermost in her mind, the loss of her boy. Well, we use the scripture for comfort for a time like that. So, I explained more about the two powers, the heavenly and the earthly. I says, "I am not your boy's judge, or you either; but the scriptures point out there is a little flock, 144,000 that will be in heaven, the earth will be made a paradise, and how the conditions of the Garden of Eden would be restored, and if Adam hadn't disobeyed the Lord they would be living here today. So, as they said, I spent about an hour and a half at one place; and I can remember is that; but those were what we spoke on, as we do in the ordained [ordinary] work, talking about the

kingdom; and talked for a long time.

Q You heard the testimony that you said Hitler would win the war, and that he would rule, or maybe would win the war, or rule maybe over here, and that President Roosevelt was wrong in putting the uniform on the boys. Did you say anything even akin to that?

A Well, if I did I wasn't preaching what I practiced, because I put on the uniform.

BY MR. POWELL:

We object to the lecture.

BY MR. CLARK:

Q Well, did you say that?

A No.

Q Did you say it was wrong to salute the flag?

A Since there were three together, I don't want to take up the time, but I would like to state that at the three ladies' houses I visited, that I didn't mention the flag at all.

Q You never discussed the flag at all?

A The flag wasn't mentioned at either place at all.

Q Well, did you mention Hitler at either place?

A Yes.

Q Tell what you said about Hitler?

A You can't preach the gospel, these things, and not mention Hitler, because he represents the totalitarian rule spoken of in the 17th chapter of Revelation.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection is sustained.

BY MR. CLARK:

Q Did you tell Mrs. Joyner—she said you told her there was a beast—you discussed the matter of a beast with seven heads and ten horns. Did you do that?

A Yes.

Q Tell what you said about the beast?

A I spoke of the beast in Revelation 17, you have read,

having seven heads and ten horns, and a man riding on top. I didn't go into detail, but I did say this: That this picture is a symbolic picture representing totalitarianism threatening all the world today.

Q I believe both of the witnesses testified you discussed that beast; that's among the things you discussed, that beast with seven heads and ten horns?

A That's right.

Q Did you tell her that Hitler would rule, or win the war, either?

A On the contrary, I told her he would not win the war.

Q How did you show her?

A I showed her, Daniel 11th Chapter speaks there of totalitarianism coming to his end—"in his end, no nation will help him". I made it clear that Hitler would not win this war.

Q Is that discussed—this is an exhibit here—and is that discussed here of Hitler's coming to his end, and none would help him?

A Yes.

Q Do you remember the page that is discussed on?

A Yes.

Q It is the "End of the Axis Powers and Comfort All that Mourn", Exhibit "1" to Mrs. Joyner's testimony, and what page?

A Page 16, first paragraph.

Q Read that to the jury?

A (Reading) "The prophecy of Daniel, at the eleventh chapter, proceeds to detail the struggle between "the king of the north" and "the king of the south", and definitely tells of the end of the totalitarian rule and that the Axis combine, the dictatorial rule, shall soon cease forever. On this occasion it is not possible to relate the details of that prophecy, but, by the Lord's grace, the Watchtower will publish the same that the people of good-will may be enlightened and strengthened in hope for complete relief."

And also on page 17, the same thing, stated in different words.

**Q** Read that on page 17.

**A** (Reading) "What, then, shall be the end of this great distress and mourning? Shall the totalitarian dictators succeed in controlling the earth? God's prophecy answers that to the full satisfaction of all who love righteousness. The prophecy tells that 'the king of the north' receives information which proceeds from Jehovah God and Christ Jesus and which greatly troubles the world powers, and 'therefore he shall go forth with fury to destroy, and utterly to make away many. . . . Yet he shall come to his end, and none shall help him.' (Daniel 11: 44, 45) That will mark the end of the rule of wickedness and will mean the end of mourning for the people."

**Q** Have you in that same book there— have you any other point— any other page there that further shows the end of the totalitarianism?

**A** Yes, sir; here it is—beginning on page 22, under the subheading "Theocracy".

**BY THE COURT:**

Is this part of the conversation this witness had with Mrs. Joyner and Mrs. Denson?

**BY MR. GILLESPIE:**

I will have to object now, because they are going too far with it.

**BY THE COURT:**

**Q** Are you testifying there was any conversation about this? If there was any conversation about this, we should overrule the objection.

**BY MR. CLARK:**

**Q** Are you testifying you gave these things you are now reading from?

**A** Yes, sir.

**Q** Go ahead and read them.



BY MR. GILLESPIE:

Q Did you say that or read that to her?

A This is one of the main things I talked about.

Q Did you talk about it or read it?

A Well, if it had been there and taken down what I said, it would have been from memory.

BY MR. GILLESPIE:

If he talked, let him say what he said.

BY THE COURT:

Q What did you do, did you read that, or talk to her and tell her in your own words what you said?

A Well, it is both the same thing, what I said and what is in the booklet.

BY MR. GILLESPIE:

I suggest he be allowed to say it then instead of reading it.

A I will continue, then, where I left off.

BY THE COURT:

Say anything you said or did, but don't speculate about what might have been said or done.

A Shall I talk about Mrs. Denson, or any one of the three, or all of them?

BY MR. CLARK:

Q Tell them what you told all of them? It was all at the same house; it all grew out of the visit you made at Mrs. Joyner's and Mrs. Denson's?

A One point stands out very clearly in my mind: Mrs. Denson said "I pray every night for every mother that has lost a son". That's where the praying for German mothers came in; that was Mrs. Denson's idea and not my wife's. And I haven't been putting my whole sole in this thing for eleven years, every day, only because I do it for the love of it. I remember very clearly what I said, because I have said it so much, and I don't have any trouble recalling it; and I went on to say to her from the Lord's viewpoint there is no Baptist, Presbyterian and Catholic; the Bible teaches

one Lord, one faith and one baptism. I says, "the Lord didn't recognize boundaries in establishing his kingdom, or the devil didn't either in establishing his;" and I says, "He is out today to use Hitler to bring on a great period of destruction and establish thereon his new order." I said, "The devil is a great mimic, and he loves to counterfeit what the Lord does, and do it first, or ahead of time; and so, the devil can read the Bible, and he knows the Kingdom is coming, and the Scriptures foretell clearly what will be the result." If you would like to hear it—it seems to be getting late—

BY MR. GILLESPIE:

Not a sermon.

A (Continuing) I have heard that before. I can't do without doing what you call "preaching". That's all I do.

BY MR. CLARK:

Q You can preach?

BY MR. GILLESPIE:

We object to the preaching.

BY THE COURT:

You go ahead and give us the essence of it. I would hope you would limit it to saying you did or didn't say these things you have been accused of saying, and I expect indirectly the evidence is trying to do that.

A (Continuing) I would like to say on that point, the best way to tell what I did say is to tell what I didn't say; and I would like to say before the Lord, before this jury and before you people out there, that "I didn't say one word of the charges made in that accusation." When you get down to the quotations from the booklets, I did. But, as far as those charges, I know what it is to suffer for Jesus' sake; because I never heard a person say—I don't believe there is a person out there can look me in the face and tell me I am for Hitler.

BY MR. POWELL:

We object to that.

BY MR. CLARK:

Q Are you, or did you tell her you were, for Hitler?

A No.

Q Did you tell her Hitler was going to win?

A No.

Q Did you tell her Roosevelt was doing wrong in putting the uniform on the men?

A I will answer that by saying that has not taken place at any time; that has not happened yet, to send them off to foreign countries to be shot down.

Q Did you tell her it was wrong to salute the Flag?

A No.

Q Does that literature teach it is wrong to salute the Flag? A No.

Q Do you teach it is wrong to salute the Flag? A No.

Q Do you think it will hurt this man here to salute the Flag? A No.

Q Have you ever taught anybody it is wrong to salute the Flag? A No.

Q Mr. Taylor, have you ever—did you there, or at any other time, teach disloyalty to the Government of the United States? A No.

Q Are you loyal to this country? A Yes.

Q Do you love this country? A I do.

Q Do you love the Flag that floats over this country?

A I love it so much I will die for what it stands for.

Q Well, did you try at that time to win away these women from and interfere with the rule of this country?

A No; I don't know where I would lead them to on this earth better than America.

Q Is there anything better than America?

A No.

Q Mr. Taylor, there has been quite a bit said about saluting the Flag; does the book "God and the State" or "Loyalty"—does any of these books say it is wrong general-

ly for people to salute the Flag, or does it say it is wrong for anyone—

A It only says it is wrong to compel one to salute the Flag.

Q Have you agreed to not salute any flag? A Yes.

Q How did you— Why did you make that agreement, and who did you make it with?

A Well, I made it with the Lord, for my protection and for the protection of my country, when I saw that trick used by Hitler to do what he has done over there, by telling the people to salute that Flag— compulsory flag saluting led Germany into the position it is now.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q Are you commanded from the Scriptures, or are you not— aren't you under commandment by the Scriptures to carry out your covenant or agreement?

A Yes; that I make voluntarily, of my own accord, my life depending on keeping it.

Q And you agreed when Hitler, you say, started his move in Germany— that's when you agreed you wouldn't salute his flag or anybody else's flag?

A That's when I became real strong.

Q Do you have any disrespect for the flag of this country?

A No.

Q Do you disrespect the Flag?

A No, sir.

Q Do you respect the Flag?

A I do.

Q Do you respect people who salute it?

A I do.

Q Have they got a right to salute it?

A They have.

Q Have you ever at any time taught anybody not to salute the Flag?

A No; I have not.

Q Will you ever teach them not to?

A No; I will not.

Q Have you taught anybody anywhere at any time to be disloyal?

A No.

Q To Mississippi or to the United States?

A I have not.

Q Are you now not claiming your liberty under the Constitution of the United States?

A That's what I am claiming, and I have the Constitution on my side, the Federal Government, John Edgar Hoover, and the—

BY MR. GILLESPIE:

We object to the argument.

BY MR. CLARK: Therefore, you respect this Government, don't you?

A I do.

Q Is there anything in that book you talked to them about that day, if you recollect—that's the book that is identified?

A No; I could find it, but it would take too long.

Q Do you remember anything in this one you talked about that day?

A This was in the bunch; I didn't pay any attention to it.

Q Look and see when it is copyrighted—it is "Loyalty". When was "Loyalty" copyrighted?

A In 1935.

Q What brought that forth? How come that book to be written?

A The question of school children—

BY MR. POWELL:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

I believe you didn't let me introduce that as an exhibit?

BY MR. GILLESPIE:

No, sir; that wasn't introduced. That was objected to and the objection was sustained.

BY MR. CLARK:

Q You did let these ladies have that book?

A Yes, sir.

Q Did you let Mrs. Joyner have that book?

A Yes; I did.

Q "Hope", I mean by that book?

A Yes; I did.

Q And for what purpose did you go around to make this call on these ladies?

BY MR. POWELL:

He has gone over that, at the very beginning.

BY THE COURT:

I believe he did.

A I have one reason I would like to mention. I called at Mrs. Denson's house at the request of Mrs. Joyner. That's how come me to go to Mrs. Joyner's. She said "our boys played together", and she would like for us to go over there because we had relieved their mind of some worry, and she wanted us to go and see Mrs. Joyner.

BY MR. CLARK:

Q Well, they testified you went over to comfort them, and that you said you went over to comfort them; is that part of the testimony true?

A That's true.

Q Did you play the phonograph record over there?

A My wife played it at Mrs. Joyner's at the first call.

BY MR. CLARK: [BY MR. GILLESPIE:]

We object to that; he is not charged with playing a bad record.

BY MR. CLARK:

It goes to the purpose and purport of his visit.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q You distributed all these books, did you?

A Yes.

Q You don't deny that?

A No.

Q Is there anything disloyal in them?

A No; nothing.

Q Anything to tend to teach people to disrespect the Flag?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q Did you intend to teach any disloyalty when you showed this book?

A No.

Q Did you intend at any time to teach disrespect to the Flag at any time in placing, or showing or selling this literature?

A Never.

Q Did you intend to teach disloyalty or disrespect to the Government or the Flag?

A No.

Q At any time, or in any of this literature?

A No; never did.

BY MR. CLARK:

That's all.

### CROSS EXAMINATION

BY MR. GILLESPIE:

Q When did you say you moved to Canton?

A It must have been about the first of March.

Q And where did you live prior to that time?

A McComb, Mississippi.

Q Were you also preaching at McComb?

A I was.

Q And where did you live before you went to McComb?

A Birmingham, Alabama.

Q How long did you live in Birmingham?

A Twelve months.

Q And where did you live before you went to Birmingham?

A Montgomery, Alabama, a couple of years.

Q And before that?

A Well, I was in Elmore County, about thirty miles above them.

Q Where were you reared in Alabama?

A Tuscaloosa.

Q And how long have you been teaching and preaching this doctrine you are now preaching?

A Twenty years.

Q How old are you?

A Thirty-seven.

Q Now, when were you ordained as a minister?

A In 1931, about April, I think it was.

Q Who ordained you?

A The Watchtower Bible and Tract Society, and the Lord first.

Q Do you hold any sort of license to preach the Gospel from any church?

A I do.

Q Where is it, please, sir?

A Up at Selective Service Draft Headquarters, Tuscaloosa.

Q What is your preacher's license doing over there?

A I submitted that so they could determine my proper rating.

Q And was it necessary for you to leave a license there?



A I don't know whether it was or not. I told them to return it.

Q And they never returned it?

A That is being considered now.

Q What is being considered?

A About whether to return it or not. I have already received my 4-D, and I have not had time to receive the other.

Q What has happened to the license?

A It has not been returned.

Q Do you know why it has not?

A No.

Q Who licensed you to preach?

A The organization.

Q What organization?

A The Watchtower Bible and Tract Society.

Q What authority has the Watchtower Bible and Tract Society to ordain you as a minister of the Gospel?

A They are fully authorized in every law of the land, the same as any other organization.

Q Then, you maintain you have the same right as any other minister?

A Absolutely.

Q Have you ever performed any marriage ceremonies?

A I haven't taken out the necessary license.

Q You haven't any license at all?

A I have my ordination.

Q Is this what you call your ordination?

A No; that's only evidence.

Q What other evidence have you?

A I have a sworn statement of the Selective Draft signed by the Superintendent of Evangelists.

Q Now, this thing you introduced here a moment ago is "To Whom it may Concern", and it certifies that R. E. Taylor, whose signature appears below, is ordained, and so forth, and it is not signed by anybody except you, is it?

Now, that's a printed signature on that, isn't it?

A Would you like for me to get my sworn statement?

Q That's what I would like to have, if you have it.

A I have it.

Q Who printed that?

A The Watch Tower Bible and Tract Society.

Q How do you know they did?

A Well, I have been up there and seen them printing them.

Q You could go down here and get Mr. Charley Harris to print you one exactly like it, if you wanted to, or any other printer?

A If I would do it.

Q Anybody could print that, couldn't they? Nobody signed that except you, have they?

A Yes; anybody could print it.

Q Now, nobody has signed that, or done any writing on that except you, have they? Who wrote that that is on there, the writing?

A I wrote this, and that's the President's signature.

Q Printed signature?

A Yes.

Q That's the one you say anybody could print? How long has this President been dead?

A No; I didn't say to print his signature.

Q How long has this President been dead?

A January 8th, I believe.

Q Which year, this year? A Yes.

Q So, the only evidence you have got that you are a minister here at all, is a card, the only writing on there is the writing put on there by yourself?

A No, I have another card by our present President. It is over there, I guess; I had it today; I have a new one, just out.

Q Well, before we get that-- "This is to certify that R. E. Taylor"— Who wrote the R. E. Taylor?

A I did.

Q Now, the name "Ralph E. Taylor", who wrote that?

A I did.

Q When did you get a letter from Mr. Rutherford telling or authorizing you to write that in there?

A I don't remember the date, but he tells me to.

Q Have you got that letter?

A Not with me, no, sir.

Q Did you find the other appointment?

A I have had it with me all day; it ought to be in there. I used that because we had it in the preliminary trial.

Q I want to see all the ordinations you have?

A That's the present President's signature.

Q That isn't written, is it?

A Looks to me like—yes, it is stamped on there.

Q Stamped on there?

A Yes.

Q Who stamped it on there?

A I don't know.

Q You don't know?

A No, sir.

Q Who wrote R. E. Taylor up here?

A I did.

Q And who wrote it down here?

A I did.

Q Then, the only writing on both of these ordinations you have got is writing you put on there, isn't it?

A Well, if you make an issue on that, I will—

Q (Interrupting) That's the only writing on there, isn't it?

BY THE COURT:

It will have to be identified.

BY MR. GILLESPIE:

I offer this and ask that it be marked an exhibit.

Said document was identified by the Reporter as Exhibit "A", Witness Taylor, on cross ex-

amination, and is in words and figures, as follows:

BY MR. GILLESPIE:

Q If Nelson Cauthen had gotten hold of one of these things he could sign it and be a preacher too, couldn't he?

A It takes more than that for Jehovah's Witnesses.

Q And it would take more than that to be a Jehovah's witness?

A That's right.

Q But he could be a preacher all right?

A Yes, sir.

Q And that's the only evidence you have got to offer this jury here at all that you are an ordained minister?

A It looks like my other, if I have it at the house, would be worth something.

Q These other folks have sworn here too, before you took the stand?

A I would like to prove it.

Q Isn't it a fact you have no authority on earth to perform any function of a minister for any church or any denomination on earth?

A No; I do not know that.

Q The only organization you do have any authority to preach for is this publishing company?

A I am ordained as one of Jehovah's Witnesses; that's right.

Q And who ordained you— what is the name of that Watch Tower business?

A That's the organization, and Sullivan is the Superintendent of Evangelists.

Q You did go out to Mrs. Bryant's, didn't you?

A Sure.

Q You had a conversation with her out there, and you distributed this literature?

A Yes.

Q There is no doubt about that?

A No, sir.

Q You have been distributing that literature wide-spread all over the country?

A That's right.

Q You did go out and have a conversation with these ladies?

A That's right.

Q About how many of those books do you suppose you have distributed throughout this country? What is your best judgment about how many you have distributed?

A You mean the United States?

Q Have you distributed them anywhere else?

A Yes, sure.

Q Where?

A I thought you meant in this State.

Q We are covering all of the territory you have covered? How many have you distributed in this State?

A I don't know.

Q Well, about how many?

A Well, I might as well say one thing as another, if I must guess, for I don't have any idea.

Q Approximately? You are trading them for butter and egg, and butter-milk?

A I wouldn't, if the people give me the eggs for nothing.

Q Your idea is and has been all the time to get them out?

A Why not?

Q I am asking you if that hasn't been your purpose?

A That's right.

Q To get as wide a distribution of this book as possible, among both white and colored?

A That's right. However, I haven't called on the colored much myself. I have worked as much as twelve counties without meeting with the colored.

Q Weren't you with Mrs. Taylor when she distributed some among the colored inhabitants of Madison County?

A A few.

Q About how many would you say you distributed in this County?

A Knowing so little about that, I wouldn't want to make a guess.

Q You have just been here about three months?

A Yes.

Q Have you distributed a large or small number?

A A medium amount.

Q A medium amount?

A Yes.

Q Haven't you any sort of idea of what a medium amount would be?

A Well, I would say several hundred.

Q Several hundred since you have been here?

A Yes.

Q And how are you paid for that? Who pays you?

A Well, I haven't failed yet to answer questions that were asked me; I have no secrets; I see no reason in not telling you—

BY MR. CLARK:

We object to that.

BY MR. GILLESPIE:

I think it would be interesting to know.

BY THE COURT:

He is on cross examination.

BY MR. CLARK:

Go ahead and tell him.

BY MR. GILLESPIE:

Q Why do you object to telling the fact?

A I don't object. You know why I might object.

Q I haven't the slightest idea, if there is nothing wrong about it?

A There are two ways. I order my literature in large quantities, at wholesale rates, and naturally get them a little cheaper, and that's my margin of expense money.

Q Then, you tell this jury that nobody is paying you

any salary or commission for distributing this literature?

A Yes and no.

Q Well, which is it, yes or no?

A There is conditionally. We can get up to as high as the whole amount of \$25.00 a month, conditionally.

Q Conditioned upon what?

A Upon our getting in so much time. If we don't work we don't eat.

Q And who is holding the eat-bag for you? In other words, who are you working for?

A I am quoting the Bible—nobody is holding the eat-bag.

Q How do you live?

A By ordering these books in large quantities and getting them cheaper; the margin is my expense money, coupled with the \$25.00 a month, if I get in a certain amount of time.

Q \$25.00 what?

A \$25.00 a month.

Q If you sell so many?

A No; if I put in a certain amount of time.

Q Who is paying you to put in that time? Who gives you the \$25.00?

A The Watch Tower Bible and Tract Society.

Q Do you know who is behind that?

A Yes.

Q Who is that?

A Jehovah God, only.

Q Then, God pays them to pay you?

A That's right. We believe that.

Q Now, what places have you distributed that besides the United States—you were going to tell us a minute ago?

A Well, I have only been out and distributed that at one place outside of the United States; that's while I was in the Army in Honolulu.

Q In the Army?

A Yes, sir.

Q How long did you stay in the Army?

A About eighteen months.

Q How come you to get out?

A Well, in the first place, I didn't want to stay in three years, and they explained you can buy out in one year if you like. I went over the year, and my sister got me out on account of my mother, who was quite sick, and I paid out. She wanted me to get out, so then I bought out.

Q Who did you buy out?

A You can buy out in Honolulu for \$140.00.

Q Who did you pay that \$140.00 to?

A Who do you suppose?

Q I don't know?

A The Government.

Q I want to know, so when I get in I can get out.

A You are unpatriotic.

Q While you were, then, in the army you were distributing this literature?

A That's right.

Q And then you bought out, and now you are going—you did go out and have these conversations, or had some conversation with these ladies, didn't you?

A Sure.

Q Now, do you deny to this jury that in the presence of Mrs. Bryant and Mrs. Joyner that you made the statement to the effect that Hitler would rule, and that he wouldn't have to come here, and wouldn't come here, but would rule anyway? Do you deny you made that statement, or a similar statement to that?

A I would like to deny it over the radio.

Q Do you deny it under oath there, where you are?

A Yes.

Q Do you deny you made a similar statement to Mrs. Denson here too?

A I do.

Q Who was present when the conversation occurred between you and Mrs. Joyner and Mrs. Bryant?



A Well, my wife, and little girl, and Mrs. Joyner and Mrs. Bryant.

Q Where is your wife?

A She is not here.

Q She knows you are being tried here, don't she?

A She knows I was to be tried.

Q She is still in Ohio?

A Yes.

Q How old is your little girl?

A Five.

Q She would be too young, but your wife is not here?

A No.

Q And you also deny you had this conversation with Mrs. Denson—she testified to?

A I do.

Q Do you deny you stated to Mrs. Joyner and to Mrs. Denson that their boys may have thought they were doing right, but that it was wrong for them to fight the enemy?

A Certainly I deny that.

Q Do you deny that you stated to them that it was wrong for the President of the United States to put the boys in uniform and send them over, that they were just being sent over and show for nothing?

A Emphatically, I do deny that.

Q And you deny you said anything of like import?

A I deny I said anything similar to it, unless she could construe the 17 Chapter of Revelation and what I have said here today of my being favor of Hitler, which I don't see how she did.

Q Then, you say you said nothing that could possibly have been construed by them—

A (Interrupting) I can see only one point, and that wasn't mentioned in this hearing; it was in the preliminary hearing; when Mrs. Joyner said that I said Hitler would rule this country, I tried to think that she had in mind that point that I was talking about, totalitarianism in Hitler;

anybody will agree totalitarianism is threatening the world.

Q And you didn't mention Hitler's name?

A Oh! yes; I mentioned Hitler's name.

Q I mean in connection with ruling?

A No; not in connection with ruling this country.

Q How long have you known Mrs. Denson?

A Since I called on them at that time.

Q And Mrs. Joyner?

A The same time.

Q And Mrs. Bryant?

A It all happened in about a week.

Q Do you know of any ill-will or prejudice that these ladies entertain towards you?

A Personally?

Q Yes.

A No.

Q And yet you tell the jury that every word they stated here with reference to that is untrue?

A Yes, with all due respect, not being their judge, I deny those charges, with all due respect to their sincerity, I deny that. I should go beyond them to the others they mentioned; I am dealing with those who caused them.

Q Then, you say somebody caused Mrs. Denson and Mrs. Joyner to say something that was untrue?

A I do.

Q You make that charge to this jury, do you?

A I don't make any charge or accusation.

Q You make that statement, do you?

A I make that statement, according to what they said, they were influenced by others to say that, with all due respect to them.

Q You say they made the statement that they had been influenced to do that?

A Here is— and I would like to qualify that, not to compromise it— but I would like to say I can understand easily why a person would at first think that we were not

having the proper attitude towards the Flag, because Jesus himself was killed for treason against the Government; the High Priest said, "If we let this man go"—

Q I object to the argument. Then, you admit the teachings you would make would be calculated to make people believe you were disloyal?

A I said until investigation.

Q Then, you never had any other conversation with these ladies so they might make further investigation, did you?

A Tried to.

Q What?

A My wife tried to.

Q You tried to but haven't?

A Tried to, but failed.

Q So, when you left them you admit what you talked to them was calculated to make you believe disloyalty?

A No; if they had the books they could have read it.

Q Isn't that what you said to the jury?

A No. I am trying to be honest to the last degree. We talked about the Kingdom of Heaven.

Q But you said you could understand why at first they might think that your teachings were disloyal? What did you mean?

A Hold no malice or prejudice.

Q That's not the question, of you holding malice or prejudice. Why did you say that your teachings to them might lead them to believe you were disloyal?

A If you won't let me explain, I will say yes and no, because I have some explanation and you are misconstruing it.  
BY THE COURT:

Answer the question and you can explain.

A (Continuing) If you will accept an explanation as an explanation, and a possibility, and not make it a fact, I will explain; but if you are going to use it as a fact to intimidate me, I won't do it.

BY MR. GILLESPIE:

Q I am not trying to intimidate you. You made the statement you could see—you yourself could see—why your teachings to them might make them believe you were disloyal to the Government. Did you state that or not there to the jury?

A In kindness and consideration to them, I say we teach the Kingdom of Heaven.

Q You made that statement?

A You said I could explain.

Q When you make the statement. Did you make that statement or not?

A Yes.

Q Now you may explain?

A I used to be a Baptist; there are some Baptists here; their creed says at the end of the world the earth will be burned up with a literal fire. I used to believe that. Ecclesiastes says "One generation will pass away"—

BY MR. GILLESPIE:

If that's the explanation it is over my head.

BY MR. CLARK:

Well, let him finish.

A (Continuing) Ecclesiastes 1 : 8, says: "One generation passeth away, and another generation cometh; but the earth abideth for ever."

BY MR. GILLESPIE:

Q Therefore, it couldn't be burned up if it abideth forever?

A That's right.

Q And that's your explanation to the jury as to why you said you could see they would think you were disloyal?

A That's my explanation, but I wouldn't say that's why they would say I was disloyal.

Q What was it you said about them saying that somebody influenced them to make these charges against you?

A If you will like for me to repeat it, it will be easy. It

has been said several times Mr. Bell told them that's against the Government, and they laid it down.

Q When did they tell you any such thing as that happened? Are you testifying about what they testified here today?

A They said that in the former hearing, we quit reading the books when they came.

Q They made no statement to you to that effect?

A No; but that and today is where I got it.

Q From the witness stand; the same thing they told the jury is what you are talking about?

A On that point.

Q In other words, you haven't heard them say anything today that the jury didn't hear them say, have you?

A That's right.

Q Now, you believe this stuff, don't you?

A With all my heart.

Q And you teach it, don't you?

A That's right.

Q You teach what you believe?

A Yes.

Q And you teach everything you believe?

A I believe it so much, I couldn't keep quiet about it.

Q You believe it to such an extent you will teach and fight about it?

A Yes, the weapon is mentioned in Ephesians, the sixth chapter—"And take the helmet of salvation, and the sword of the Spirit, which is the word of God."

Q Let me understand you. You believe this you are talking about?

A Yes, sir.

Q And you teach it, all you have been talking about, as your belief?

A I don't teach all of it, for this reason—

Q (Interrupting) What part do you teach?

A We believe the Bible is a light unto our feet. We are

teaching present truth. We don't teach some of the things written in the past. We have courage to make improvements, and walk in the light. I can show you some things in our literature we don't preach.

Q You distribute it and let the public take it as it is, and other things you teach?

A Do you know why these booklets went out? You notice I said I gave them twenty-two for thirty-five cents—there were some old booklets to get rid of.

Q You don't feel it is right to salute the Flag, do you?

A For me, no.

Q And you don't salute the Flag, do you?

A No.

Q And you just said you taught what you believed, didn't you?

A Well, if you are trying to trap me, you made a mistake.

Q I am not trying to trap you. You don't believe it is right to salute the flag?

A Because I already established with the Lord not to salute the Flag.

Q You don't believe it is right to salute the Flag?

A Yes.

Q I thought you said you didn't? You don't salute it, do you?

A I am just getting used to you. Do you?

Q You don't salute it, do you?

A No.

Q If it is right, why don't you salute it?

A If it is right to salute the Flag, why don't I salute it?

Q That's right.

A I have agreed, as early Christians thought, it was wrong. I took an obligation on myself, or put myself in a class to, myself, and with all respects to those ladies who do salute it, but I am in a class that is too high, and I am fighting for what my forefathers started this country for.

Q You won't salute the flag?

A Should I salute any flag?

Q I don't know.

A No.

Q You don't believe it is ~~is~~ right to salute it; if you did you would still do it yourself?

A It is wrong for me.

Q Don't you teach the same thing to other people?

A Absolutely not.

Q Why don't you teach it to other people, if you believe it to be right, and you are a preacher?

A I would be committing a sin to tell a person not to do what is right for him to do.

Q It would be all right for him to do it?

A It would be all right for me too, if I wanted to do it. If I wanted to salute it, I would salute it.

Q And that's what you teach?

A No; we don't make that a study.

Q Who is the first fellow that told you about not saluting this Flag? You will let me read you this sentence on Page 8 of "Loyalty"; you try to get folks to be Christians, don't you?

A I do.

Q You are certain of that, and going to stick to that?

A Yes, sir.

Q I see here, underscored: "For a Christian to salute a flag is in direct conflict with God's"—or "direct conflict with God's specific commandment." That's in the book you distributed, isn't it?

A Yes, sir.

Q That's in there, isn't it?

A Yes.

Q And you said you are a Christian?

A I am a Christian.

Q Then, you said a minute ago you didn't believe it is a sin. Which is correct? Is it or isn't it?

A I had better get you straight. What did you say?

Q You said a moment ago it was not wrong to salute the flag, but you wasn't going to do it; then I asked you if you were a Christian, and you said you were, and in that book it says it is a sin for a Christian to salute the flag—

A (Interrupting) It is wrong for me, or anybody in my position to do so, but not others.

Q In your position— you mean as a minister or as a member of the—

A (Interrupting) No, me as one who has decided that saluting the flag is— Exodus 3:20 says "Thou shalt not make unto thee any graven image or any likeness"— I took that perfect high rule on me, and I am having to fight for it.

Q You and other?

A If a person is in my same position that rule applies to him.

Q In other words, if he feels as you do?

A That's right.

Q How long have you had that belief?

A Which belief?

Q That you wouldn't salute the Flag?

A Just a few years.

Q How many years?

A Oh! along about—I think about 1934 or 1935—probably 1934.

Q When did you say you were in the army?

A 1931. I got out of the army in 1931.

Q Got out to keep from saluting the Flag?

A No; I started in to stay twelve months.

Q You had to salute it in there?

A Glad to, because it was required by proper authorities. Do you know what those authorities were?

Q Yes, I sure do.

A The United States Government and my conscience—the United States Army and my conscience.

BY MR. GILLESPIE:

That's all.



BY MR. CLARK:

Q I would like to ask you in regard to what we have in European history that made you make up your mind about that flag— he was trying to bring it out?

A What crystalized it was when Hitler started and wanted to make the flag an object or a club to take the peoples' liberties away from them. That's when I learned how the flag should be used, and that's when I made up my mind to be on the safe side.

Q These books they have got here "God and the State" and "Loyalty" shows that that grew out of the Hitler—

BY MR. GILLESPIE:

We object to that; the books speak for themselves.

BY MR. CLARK:

That's all.

BY MR. GILLESPIE:

Q Are you a conscientious objector?

A No, sir; nor a pacifist.

BY MR. GILLESPIE:

That's all.

(WITNESS EXCUSED)

BY MR. CLARK:

The defendant rests. I want to make this motion.

The jury here retired by order of the Court, and in the absence and out of the hearing of the jury, the following proceedings were had and entered of record:

Now comes the defendant in the above entitled and numbered cause and files this his motion for directed verdict at the close of the case and when all evidence is in, and as grounds therefor says:

### ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session of 1942, is void on its face and unconstitutional because Sec-

tion 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of his rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

## TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of this defendant because Section 1 thereof deprives defendant of his inherent rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

## THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

## FOUR

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a

dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because section 2 thereof is unreasonable and in excess of the police power of the State, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

### EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt and the indisputable evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

Wherefore, defendant prays that upon consideration hereof the Court exclude all the evidence, grant this motion and instruct the jury to acquit the defendant and by their verdict say "We the jury find the defendant not guilty", and render a judgment dismissing the indictment and discharg-

ing the defendant with his costs, and defendant prays for such other and further reliefs as he may show himself justly entitled to.

**BY THE COURT:**

Let the motion be overruled.

### **Stenographer's Certificate**

**STATE OF MISSISSIPPI, County of Hinds**

I, R. S. Streit, Official Court Reporter, in and for the Seventh Circuit Court District of the State of Mississippi, hereby certify that the foregoing pages, numbered 1 to 124, inclusive, contain a full, true and correct transcript of my stenographic notes taken upon the trial of the cause shown in the caption hereof.

I further certify that I have this day filed with the Circuit Clerk of Madison County, Mississippi, the original and carbon of this transcript, and that I have notified by U. S. Mail, postage prepaid,

Hon. H. B. Gillespie, District Attorney, Raymond,  
Miss.,

Hon. G. C. Clark, Waynesboro, Mississippi,

of my action in so filing this transcript with said Clerk.

This 25 day of August, 1942.

R. S. Streit  
Official Court Reporter.

Stenographer's fee \$56.25

**Clerk's Certificate**

[fol. 183]

STATE OF MISSISSIPPI

V.

R. E. TAYLOR, *Defendant*

No. 8672

I, R. C. Randel, Clerk of the Circuit Court of Madison County, Mississippi, do hereby certify that the foregoing 184 pages contain a true and correct copy of all the pleadings, evidence, instructions and judgment and decree appealed from, and constitutes the record as it appears in my office in the above entitled cause.

Witness my signature this the .. day of .... A. D. 1942.

CIRCUIT CLERK.

**Opinion****IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC**

No. 35143

(Opinion rendered January 25, 1943)

**R. E. TAYLOR v. STATE OF MISSISSIPPI****ROBERDS, J.**

The Legislature of Mississippi at its 1942 regular session enacted Chapter 178, General Laws of Mississippi 1942, which the Reporter will set out in full.

Appellant was indicted, tried, convicted and sentenced for violation of Section 1 of that Act. He appeals.

He first contends that the evidence is not sufficient to support his conviction. }

Summarized the evidence is that appellant and his wife, the latter part of May and the first of June 1942, appeared at the homes of a Mrs. Joyner and Mrs. Denson in Madison County, Mississippi, and then and there, according to the testimony of Mrs. Joyner, said to those present:

"Well, he came in and said he wanted to talk with me; and they came in and sat down and he began to talk, and looked through the Bible; he didn't read any in the Bible, but just turned through it, and talked; and told me that the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to salute the Flag; that we just worshiped our Government and our Flag, and looked on it as something sacred; and that it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there."

A Mrs. Bryant, who was present, testified:

"Well, he said it was wrong for our President to send

these boys across in uniform to fight our enemies; said it was wrong to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come down here to rule; and he said the quicker the people here quit bowing down and worshipping and saluting our Flag and Government, the sooner we would have peace."

Mrs. Denson gave the same version in substance of what was said at her home, except she added:

"He said there were just as many sheep—he divided the people as sheep and goats, the Jehovah's witnesses were the sheep and the believers; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, 'You know you would hate to see a German mother lose her son as much as you would anyone else.' But he told me to study the literature, and that I would get comfort from it." He had theretofore appeared at the home of Mrs. Bryant and sold her some literature.

Mrs. Joyner and Mrs. Denson had each lost a son in the attack upon Pearl Harbor. He also said their sons would come back and live with them forever. Appellant says it was his intention to comfort them. They were strangers to appellant and the record does not disclose how he knew their sons had been killed.

Appellant admitted making some of the statements and flatly denied making others. He alone testified in his own behalf as to whether the statements were or were not made. His wife, who was present when it is claimed the statements were made, was not present at the trial and did not testify. It was the province of the jury, not ours, to say who was testifying truthfully—these three ladies or appellant.

The proof furthermore is that each of these three ladies purchased from appellant certain written literature, consisting of twenty-two books and pamphlets, for thirty-five

cents. A number of these books and pamphlets were introduced in evidence. Certain excerpts from this literature were selected and introduced by the State. Four of such excerpts were:

"All nations of the earth today are under the influence and control of the demons. . . . All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government of kingdom of Almighty God. . . . and all are under the control of the invisible host of demons, . . ."

"But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment."

"Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world."

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment . . ."



Other passages in this literature teach that "the so-called democracies" hold out no hope of peace, security, life or happiness—that the only place of safety is in Theocracy; that if there is a conflict between state law and what Jehovah's witnesses conceive to be Jehovah's law, the state law should not be obeyed; that Jehovah's witnesses take a pledge not to salute the flag and that to undertake by law to force a child to salute the flag is to "frame mischief by law." Appellant justified his attitude and conduct by quoting on the stand certain passages of the Scriptures and calling attention to other passages therefrom appearing in the literature.

In addition to the foregoing, appellant himself testified that he was an ordained minister. His earthly ordination was evidenced by a printed postcard containing the printed signature of the Watchtower Bible and Tract Society and its president, and which card has a blank space for the name of the person to be ordained and a blank for the identifying signature of such person. Both of these blanks had been filled in by appellant. Appellant also evidenced his ordination as a minister by referring to certain Scriptural passages. He said he had been a full time Jehovah's Witness for twelve years; that he came to Mississippi from Alabama and had been here some three months; that he had contacted many of the other citizens, white and colored, of Madison County and had sold to them many sets of the literature; that his financial income from this work consisted of the excess of the sale over the cash prices of the literature and as much as \$25 per month paid him by said Society, "upon our getting in so much time. If we don't work we don't eat"; that there were one hundred and forty-four thousand such workers in the United States; that the workers were under a superintendent; that he was not a pacifist and he loves his country; that he was in the Army in the last World War on duty in Honolulu, and after having served about eighteen

months he purchased his release therefrom by paying "the government \$140."

Placing these words and acts against the statute, it will be seen that they may be reasonably construed to violate it in these respects: (1) that they are calculated to encourage disloyalty to the Governments of the United States and of Mississippi, and discourage enlistment in the armed forces of the Nation; (2) that they advocate the cause of the enemies of the United States; and (3) that they reasonably tend to create an attitude of stubborn refusal to salute, honor, or respect the flag or government of the United States. Assuming the validity of the law, we think the evidence is sufficient to support the verdict of the jury.

Appellant contends that this statute is unconstitutional as to him because it deprives him of the right of free speech and free press guaranteed by the Constitutions of Mississippi and the United States. The act, as an entirety, is sufficiently comprehensive in its objects, including, for instance, sabotage and acts of violence against the sovereign, to meet this constitutional attack, but the question is whether it is constitutional as applied to appellant and his conduct. The question should be tested by the powers of the sovereign in war-time and the corresponding rights and duties of the people during such time. Even in peace-time the right of free speech does not mean unbridled license of speech. The right may be abused, for which abuse punishment may be meted out under the police power of the State. The Constitution protects the right but not the abuse. For instance, one has no right even in times of peace to use language, oral or written, which wrongfully injures another in person or property, or tends to corrupt public morals, induce crime, endanger the public safety, or which advocates a change in industrial conditions or the form of government by use of force, violence or other unlawful means. *State v. Quinlan*, 86 N. J. L. 120, 91 Atl. 111; *State v. Boyd*, 86 N. J. L. 75, 91 Atl. 586, affirmed 87 N. J. L. 328,

95 Atl. 599; *State v. Fox*, 71 Wash. 185, 127 Pac. 111, affirmed in 236 U. S. 273, 59 L. Ed. 573; *People v. Most*, 171 N. Y. 423, 58 L. R. A. 509, 64 N. E. 175; *State v. Gibson*, (Iowa) 174 N. W. 34; *State v. Tachin*, 92 N. J. L. 269, 106 Atl. 145; affirmed 108 Atl. 318; *State v. Gabriel*, 95 N. J. L. 337, 112 Atl. 611; *People v. Gitlow*, 195 App. Div. 773, 185 N. Y. Supp. 783; *Re Moriarity*, 44 Nev. 164, 191 Pac. 360; *Re McDermott*, 180 Cal. 783, 183 Pac. 437; *People v. Malley* (Cal.) 194 Pac. 48; *People v. Steelik*, (Cal.), 203 Pac. 78; *State v. Worker's Socialist Pub. Co.*, (Minn.) 185 N. W. 931; *Whitney v. California*, 273 U. S. 357, 71 L. Ed. 1095 (affirming 57 Cal. App. 449, 207 Pac. 693); *People v. Wagner*, 65 Cal. App. 704, 225 Pac. 464; *People v. Cox*, (Cal.), 226 Pac. 14; *Burns v. U. S.*, 274 U. S. 328, 71 L. Ed. 1077, 47 S. Ct. 650; *Re Denton* (Kan.), 195 Pac. 981; *People v. Ruthenberg*, (Mich.) 201 N. W. 358, (writ of error dismissed in 273 U. S. 782, 71 L. Ed. 890, 47 S. Ct. 470); *Berg v. State* (Okla.), 233 Pac. 497; *Com. v. Widovich*, (Pa.) 145 Atl. 295, (affirming 93 Pa. Super. Ct. 323, appeal dismissed and cert. denied, 280 U. S. 518, 74 L. Ed. 588, 50 S. Ct. 66.) Even so, if this were peace-time legislation, the writer would not hesitate to hold it unconstitutional as to appellant.

But this one of several statutes passed by the Mississippi Legislature in 1942 to aid in the prosecution of the present war and to meet conditions arising out of the war. The reasons for its enactment are summarized in the preamble. It is an emergency, temporary war act, and by its express terms it will expire upon termination of the war. "When a nation is a war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right." *Schenck v. U. S.*, 249 U. S. 47, 63 L. Ed. 470, 39 Sup. Ct. Rep. 247. Again, "To the end that war may not result in defeat, freedom of speech may, by act of Congress, be curtailed or denied so that the morale of the people and the

spirit of the army may not be broken by seditious utterances; freedom of the press curtailed to preserve our military plans and movements from the knowledge of the enemy; deserters and spies put to death without indictment or trial by jury; ships and supplies requisitioned; property of alien enemies, theretofore under the protection of the Constitution, seized without process and converted to the public use without compensation and without due process of law in the ordinary sense of that term; prices of food and other necessities of life fixed or regulated; railways taken over and operated by the government; and other drastic powers, wholly inadmissible in time of peace, exercised to meet the emergencies of war." *United States v. Macintosh*, 283 U. S. 605, 75 L. Ed. 1302.

The Espionage Act enacted by Congress in 1917 (40 Stat. at L. 219, Chap. 30) and the amendment thereto in 1918 (40 Stat. at L. 553, Chap. 75, Comp. Stat. Sec. 10, 212c, Fed. Stat. Anno. Supp. 1918, p. 120) provide, *inter alia*, that whoever, when the United States is at war, shall "wilfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of Government of the United States;" or its Constitution, military or naval forces, flag, or uniform, or any language intended to bring the form of the Government of the United States, or the Constitution, military or naval forces, flag, or uniform into contempt, or disrepute; or "wilfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies;" or whoever shall wilfully advocate, teach, defend, or suggest the doing of any of the acts or things enumerated in the statute; or "whoever shall by word or act support or favor the cause of any country with which the United States is at war, or by word or act oppose the cause of the United States therein," shall be punished by fine of not more than ten thousand dollars or imprisonment for not more than twenty years, or both. The words

of this act are strikingly similar to the state act now under consideration. The Espionage Act, without exception, has been held constitutional as an emergency war act. *Frohwerk v. United States*, 249 U. S. 204, 63 L. Ed. 561; *Debs v. United States*, 249 U. S. 47, 63 L. Ed. 470; *Abrams v. United States*, 250 U. S. 616, 63 L. Ed. 1173; *United States ex rel Milwaukee S. D. Pub. Co. v. Burleson*, 255 U. S. 407, 65 L. Ed. 704; *Dodge v. United States*, 7 A. L. R. 1510, 258 Fed. 300, petition for writ of certiorari denied 250 U. S. 660, 63 L. Ed. 1194; *Equi v. United States*, 261 Fed. 53, petition for writ of certiorari denied, 251 U. S. 560, 64 L. Ed. 414; *Wimmer v. United States*, 264 Fed. 11, petition for certiorari denied, 253 U. S. 494, 64 L. Ed. 1030; *Dierkes v. United States*, 274 Fed. 75; *Seebach v. United States*, 262 Fed. 885. In the *Schenck* case, *supra*, the Court in drawing the distinction between peace-time and war-time legislation said "We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. . . ." In the *Dodge* case, *supra*, the Court held that the Constitutional guarantee of freedom of speech does not extend to the protection of utterances in time of war which involve the integrity of the nation or injure or tend to injure it.

A number of the states have passed sedition acts, some during the last World War and some in peace-time, having for their general object the curtailment of speech and action tending to create hostility to or the undermining of state and national governments. Some of these have been held unconstitutional as denying freedom of speech, or on other grounds; others have been held constitutional.

The Connecticut Statute (Chap. 312, Laws 1919), penalized disloyal or abusive matter concerning the form of government of the United States, its military forces, flag, or uniform, or any matter which was intended to bring them into contempt. This was held not to violate the right

of free speech and was a subject within the police power of the state. *State v. Sinchuck*, (Conn.) 115 Atl. 33, 20 A. L. R. 1515.

The Iowa Statute (Acts 37th Gen. Assem. c. 372) provides (1) that if any person shall incite insurrection or sedition etc. or shall attempt, by word or writing or other means, to do that; or (2) shall, by speech or writing or other means, advocate the subversion or destruction by force the government of the state or the United States; or (3) who shall by any method incite, abet or encourage hostility or opposition to either government, he is guilty of a crime. This did not abridge the right of freedom of speech. *State v. Gibson*, (Iowa) 174 N. W. 34.

The Montana Statute declared that whenever the United States is at war any person who shall utter, print, write, or publish any language calculated to incite or influence resistance to any duly constituted Federal or state authority in connection with the prosecution of the war, shall be guilty of a criminal offense. The act has been held constitutional in a number of state decisions. *State v. Kahn*, 182 Pac. 107; *State v. Wyman*, 186 Pac. 1; *State v. Smith*, 190 Pac. 107; *State v. Fowler*, 196 Pac. 992, rehearing denied 197 Pac. 847; *State v. Schaffer*, 197 Pac. 986, and in *Ex parte Starr*, 263 Fed. 145.

The New Jersey Court upheld the section of the law which made it a penal offense to advocate the subversion of the government by force, but denied validity to the provision making it such an offense to belong to an organization or attend meetings having for their purpose encouraging hostility or opposition to the state or national government, because the wording of the latter section covered the use of lawful as well as unlawful means. *State v. Tachin*, 106 Atl. 145, affirmed 108 Atl. 318. This appears to have been a peace-time statute and is in accord with the holdings generally under such statutes, as shown above.

Likewise the New York Statute, involving attempt to



overthrow the government by force or violence, or other unlawful means, and the advocacy thereof by word or writing was upheld in *Gitlow v. New York*, 268 U. S. 652, 69 L. Ed. 1138, (affirming 234 N. Y. 132, 539, 136 N. E. 317, 138 N. E. 438;) and *People v. American Socialist Society*, 202 App. Div. 640, 195 N. Y. Supp. 801. This was peace-time legislation (Laws 1909, Chap. 88, originally enacted in 1920).

But the prohibition of the use of disloyal language per se, in a Texas statute, as a war measure, was held to be a subject exclusively of Federal legislation, and not within the scope of state legislation, and was not within the police power of the state and violated the right of free speech, on the ground that the statute was so worded as to penalize one who uttered language of such nature, whether it was used under such circumstances as to make it reasonably provocative of a breach of the peace or not. *Ex parte Meckel*, 220 S. W. 81; *Schellenger v. State*, 222 S. W. 246.

Also, the Illinois Statute limited the means to force or violence and was upheld as peace-time legislation. *People v. Lloyd*, 304 Ill. 23, 136 N. E. 505; and likewise an act of the State of Pennsylvania, requiring force or violence and intent, *Com. v. Widovich*, 295 Pa. 311, 145 Atl. 295 (affirming 93 Pa. Sup. Ct. 323, appeal dismissed and cert. denied, 280 U. S. 518, 74 L. Ed. 588).

We now turn to authorities more directly in point on the question under consideration.

Chapter 463, Laws of Minnesota, approved April 20, 1917, a war act, in the first section thereof, made it an offense to advocate, or attempt to advocate, by word or writing, that men should not enlist in the military or naval forces of the United States, and the second section thereof provided: "It shall be unlawful for any person to teach or advocate by any written or printed matter whatever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States." Holm was

charged with circulating a pamphlet containing statements "this war was arbitrarily declared against the will of the people"; that the people are ten to one against it; that "the President and Congress have forced the war upon the United States," and are attempting by conscription to "force us to fight a war to which we are opposed;" that "this war was declared to protect the investments of Wall Street in the bonds of the allies." Holm said he was exercising his right of free speech. The Court said that he had abused the right—" . . . the freedom secured thereby is not an unlimited license to speak and publish whatever one may choose. It is settled that the state may prohibit publications or teachings which are injurious to society, or which tend to subvert or imperil the government or to impede or hinder it in the performance of its public and governmental duties without infringing the constitutional provisions which preserve freedom of speech and of the press;" that the right does "not grant immunity to those who abuse this privilege, nor prevent the state from making it a penal offense to publish or advocate matters or measures inimical to the public welfare." *State v. Holm*, (Minn.) 166 N. W. 181, L. R. A. 1918C 304.

In *State v. Gibson*, (Iowa) 174 N. W. 34, the indictment charged that defendant, "did attempt by speech, action, and manner of speaking to incite, abet, promote and encourage hostility and opposition to the government of the State of Iowa and of the United States," contrary to the sedition act of Iowa. The statute is summarized above herein. The Court held right of free speech was abused, saying the framers of the Constitution "did not intend to protect what might destroy the state."

In *State v. Kahn*, *supra*, Kahn used this language "this is a rich man's war, and we have no business in it. They talk about Hooverism—it is a joke. Nobody pays any attention to it. It don't amount to anything. The *Lusitania* was warned not to sail. They were carrying munitions and



wheat over for the allies. The poor man has no show in this war. The soldiers are fighting the battles of the rich."

The Court said "In time of peace the language employed by this defendant, or language of similar import, might not constitute a crime, and it may be true that it is beyond the power of the Legislature to make its use a crime in the time of peace; . . . as said by the Supreme Court of the United States: 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right', citing the Schenck, Frohwerk and Debs cases, *supra*.

In the Gilbert case, *supra*, the State of Minnesota had a statute making it unlawful to advocate that men should not enlist in the armed services of the United States and also "for any person to teach or advocate by any written or printed matter whatsoever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting and carrying on war with the public enemies of the United States." Gilbert said "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy? I tell you what is the matter with it: Have you had anything to say at to who should be President? Have you had anything to say as to who should be governor of this state? Have you had anything to say as to whether we would go into this war? You know you have not. If this is such a good democracy, for Heaven's sake why should we not vote on conscription of men? We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty eight hours." In overruling the contention that Gilbert was properly exercising his right of freedom of speech, the Supreme

Court of the United States, speaking through Mr. Justice McKenna, said "it (the right) is not absolute—it is subject to restriction and limitation. And this we have decided in *Schneck v. United States* (supra). We distinguished times and occasions, and said that 'the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic'"; also that in the *Frohwerk* case, supra, that the Court said "the 1st Amendment, while prohibiting legislation against free speech as such, cannot and obviously was not intended to give immunity to every possible use of language," citing also the *Debs* and *Abrams* cases, supra, and *Schaefer v. United States*, 251 U. S. 466, 64 L. Ed. 360, where it was said, that the curious spectacle was presented of the Constitution of the United States being invoked to justify the activities of the enemies of the United States. The conviction was sustained because we were then, as now, at war with Germany.

So far, we have not dealt with the question of the flag. We do that now.

In *Ex parte Starr*, 263 Fed. 145, a state statute making it an offense to utter or publish slurring language about the flag was held valid.

In *Com. v. Karvonen* (Mass.), L. R. A. 1915B, 706, 106 N. E. 556, Ann. Cas. 1916D, 846, the Court upheld a statute making it unlawful to carry in a parade a red or black flag or banner having upon it an inscription opposed to organized government, which is sacrilegious, or derogatory to public morals.

In *People v. Burman*, (Mich.) 25 L. R. A., (Ns.) 251, 117 N. W. 589, the Court upheld a municipal ordinance prohibiting the display of a red flag in a procession where it is likely to disturb the public peace.

On the other hand, a California court held invalid a municipal ordinance which made it unlawful to display, or to have in possession, a flag of any society or association which espoused principles or theories antagonistic to the

United States or its Constitution, because this included an effort to change the form of government by peaceful means. *Re Hartman*, 188 Pac. 548.

In *People v. Lloyd*, (Ill.) 136 N. E. 505, the court upheld a statute prohibiting, inter alia, the display of a flag at a public meeting, or in a parade, intending thereby to overthrow the government by force or violence.

In *State v. Sinchuk*, (Conn.) 115 Atl. 33, 20 A. L. R. 1515, a statute was held valid which provided, among other things, that it was an offense to publish matter abusive or disloyal of the form of government or the flag.

The Supreme Court of the United States, in *Stromberg v. California*, 283 U. S. 359, 75 L. Ed. 1117, held invalid a statute which made it an offense to display a flag at a public assembly "as a sign, symbol or emblem of opposition to organized government, or as an invitation or stimulus to anarchistic action, or as an aid to propaganda that is of a seditious character," because it might be construed to include an orderly opposition to government by legal means and within constitutional limitations.

In *Minersville School District v. Gobitis*, 310 U. S. 586, 84 L. Ed. 1375, the Supreme Court of the United States upheld a school regulation requiring all pupils to salute the American flag as a part of the daily school exercises, and providing that refusal to salute the flag should be regarded as an act of insubordination and dealt with accordingly.

Similar state statutes, or school regulations, were upheld in *People ex rel v. Sandstrom*, 279 N. Y. 523, 18 N. E. 2d 840, 120 A. L. R. 646; *Leoles v. Landers*, 302 U. S. 656, 82 L. Ed. 507 (dismissing appeal from 184 Ga. 580, 192 S. E. 218); *Hering v. State Bd. Ed.*, 302 U. S. 624, 82 L. Ed. 1087, (dismissing appeal from 118 N. J. L. 566, 194 Atl. 117) *Gabrielli v. Knickerbocker*, (Cal.) 82 Pac. 2d 391; and *Nichols v. Lynn*, (Mass.), 7 N. E. 2d 577, 110 A. L. R. 377. The District Court of the United States, Southern District of West Virginia, in the case of *Walter Barnette et al. v. West Virginia*

State Board of Education et al., not yet reported as this opinion is being written, speaking through Judge Parker, has aligned that court with the cases holding invalid rules of school boards requiring school children to salute the flag. The last six cases involve children of Jehovah's witnesses. These cases are persuasive, not decisive, on this question, because, with the exception of the Starr case, they involve permanent, peace-time rules and statutes commanding affirmative action by defendants, whereas the Mississippi Statute is temporary, emergency war-time legislation to restrain affirmative teaching and action operating upon and to the detriment of others, and to the injury of the general public.

The importance and far-reaching import of the attitude of appellant towards the flag, as disclosed by the evidence herein, are shown by the statements of Mr. Justice Harlan in *Halter v. Nebraska*, 205 U.S. 34, 51 L. Ed. 696: . . . a state will be wanting in care for the well-being of its people if it ignores the fact that they regard the flag as a symbol of their country's power and prestige, and will be impatient if any open disrespect is shown towards it . . . that to every true American the flag is the symbol of the nation's power—the emblem of freedom in its truest, best sense. It is not extravagant to say that to all lovers of the country it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression."

Our nation is now in a war of self-defense for self-preservation. Freedom of speech is not the only, nor the most important, constitutional right of the citizens of this country. The constitution provides that no law shall be passed impairing the obligation of contract; yet under the moratorium laws and Soldiers' Civil Relief Act no security contract can be enforced against one in the military service;

and lease and rental contracts between civilians in war areas are subject to approval and change by national administration officials regardless of the assent of lessors. The Constitution provides that the courts shall be open to all persons, yet under that act no legal proceeding can be prosecuted to completion, except under unheard of peace-time restriction and limitations. Under the war power acts and Inflation Emergency Price Control Acts, the entire financial and living fabric of the Nation is being woven to best aid in the prosecution of the war, regardless of individual rights. The Constitution provides that life and liberty shall not be taken without due process of law, yet under the Selective Training and Service Act the people are inducted into the military service, willingly or unwillingly, and we judicially know that the lives of many of them are being given for their country on the sands of Africa and in the jungles of New Guinea and in other foreign countries. A nation must have inherently the power to save itself. If all individual constitutional rights were maintained, the Nation could not defend itself. The rights of the citizens must give way temporarily as this may be reasonably necessary for the Nation's self-preservation.

The act has two objects: aid in prosecuting the war and dealing with local conditions arising out of the war. This is a war of all the people—not those in the military service alone. The spirit and morale of the people; their willingness to help financially by personal effort; their support of, belief in, and respect for the government are essential to its successful prosecution. The legislature knew the local conditions—that we have two races about equal in numbers in this state, and that under the stress of the times agitation and subversive influence should not be abroad among the people. The Legislature is the judge of conditions justifying such legislation unless it is clearly apparent to the Court that the assumption is unfounded. *State v. Sinchuk*, supra. This is not the usual political discussion, with a view,

by commendation or criticism, to aid or better the government and its administration. "Words are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of government in a democratic state." *Masses Pub. Co. v. Patten*, (D. C. S. D. N. Y.) 244 Fed. 535. Appellant and his co-workers are going about the country and into the homes of the people, of low and high degrees of intelligence, and all races, advocating disobedience to all laws and disrespect for and disloyalty to all governments, if perchance the particular law or the nature of the government in his opinion is not in accord with Theocracy. And this at a time when the nation is straining every nerve, muscle and sinew, and mobilizing every resource and person, to defend itself against a treacherous attack of one and the evil designs of all of its enemies. We draw a sharp line between war and peace time powers, and hold that under the conditions the Legislature had the right, under its police powers, to enact this statute, and it does not violate the right of free speech and free press of appellant.

Appellant next earnestly contends that he is deprived of freedom of worship. It is true that freedom of worship includes freedom to believe and freedom to act, the first of which is absolute, "but, in the nature of things, the second cannot be". "Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213. But in this case the right is asserted on a false assumption. There is not conflict between the right to worship, including the teaching of such worship, and loyalty to the flag and government of one's country. The Constitution does not define religion. *Reynolds v. United States*, 98 U. S. 145, 25 L. Ed. 244. Appellant professes the religion of Christianity. Without undertaking a definition, the Christian religion, in its most important



ultimate aspect, recognizes, has faith in and worships a Divine Being or Spirit—one Father of all mankind—who has the power to and will forgive the transgressions of repentants and care for the immortal souls of the believers, and which belief brings earthly solace and comfort to and tends to induce right living in such believers. Its primary object is a haven of rest after “life’s fitful fever is over.” It is a fallacy of the rankest kind to assume that loyalty to one’s country and its flag is attributing to them any aspect of divinity or omnipotent power. Since the days of barbarism and savagery, it has been necessary that people live in organized society. Law, order, institutions, the earthly existence of the people, depend upon some organization. But these are earthly—for the protection here of mankind. They have nothing to do with divinity or immortality. Jesus himself announced that almost two thousand years ago. When the spies, seeking to entrap him, asked “Is it lawful for us to give tribute unto Caesar, or no?”, He replied “Render therefore unto Caesar the things which be Caesar’s and unto God the things which be God’s.” Luke XX: 22, 25. As was said in *Nicholls v. Lynn*, (Mass.) 7 N. E. 2d 577, 110 A. L. R. 377, “The term ‘religion’ has reference to one’s views of his relation to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to His Will. . . . With man’s relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.’ The flag salute and pledge of allegiance here in question do not in any just sense relate to religion. They are not observances which are religious in nature. They do not concern the views of any one as to his Creator. They do not touch upon his relation with his Maker. They impose no obligations as to religious worship. They are

wholly patriotic in design and purpose. . . . The pledge of allegiance to the flag . . . is an acknowledgment of sovereignty, a promise of obedience, a recognition of authority above the will of the individual, to be respected and obeyed. It has nothing to do with religion. . . . There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance."

The doctrine is preached by this appellant that the laws of the land should not be obeyed if they conflict with what the believer thinks is the law announced by Jehovah. This would sanctify the reasons for disobeying all human law, regardless of the soundness of the reasons, selecting passages here and there from the Bible, and lifting them out of their context and setting to support the belief. This would result, as in the past it has resulted, in not obeying the law against taking human life if the taker thought such taking justified (*United States v. Macintosh*, 283 U.S. 605, 75 L. Ed. 1303); in the justification of bigamy if defendant thought was right. *Davis v. Beason*, 33 L. Ed. 637. History discloses sects which, as a part of their religious tenets, advocates that there should be no marriage ties, approving promiscuous intercourse between the sexes as prompted by the passions of their members, and as part of their ritual the sacrifice of human beings. That subordinates the authority of the State to the whims of each individual. Such a doctrine is utterly destructive of human society and laws. See the old (1854) but leading case of *Donahoe v. Richards*, 38 Maine Rep. 379. As bearing upon the religious question, but not necessarily as an approval of the rules and holding therein, we cite *Jones v. City of Opelika*, 86 L. Ed. 1174; *Bowden v. City of Ft. Smith*, 86 L. Ed. 1174; *Com. v. Anderson*, (Mass.) 172 N. E. 114, 69 A. L. R. 1097; cases in note 114 A. L. R. 1452.

This statute is directed at affirmative action—action upon others.



Mention is made of the exemption from military service of conscientious objectors. The suggestion is not relevant to the point but it might be remarked that such exemption is based on a policy of Congress and not upon a constitutional right. Application for citizenship was denied applicants in the Macintosh and Reynolds case, *supra*, because the applicants were not willing to fight to preserve their country. The right of freedom of religion is not involved in this case.

Appellant says he cannot be held guilty under the proof here because it fails to show a clear and present danger of accomplishing the evils which are the objects of the statute. The Espionage Statute, as construed, does so require. Schenck and Frohwerk cases, *supra*. The state sedition acts appear not do so, as a rule. Gitlow case, *supra*. The Mississippi statute does not do that. That was not necessary to its validity. *State v. Sinchuk*, *supra*. But if the state statute did so require, we think the proof here sufficient to meet the requirement. The utterances, the circumstances and the objects are all to be considered. The utterances, oral and written together, are certainly calculated to create disloyalty to the state and national governments and reasonably tend to create an attitude of stubborn refusal to salute the flag. "If the act, (speaking of circulating a paper) its tendency and the intent with which it is done, are the same, we perceive no ground for saying that success alone warrants making the act a crime." *Schenck v. United States*, *supra*; *Goldman v. United States*, 245 U.S. 474, 477, 62 L. Ed. 419.

It is true that listners in this case who testified said this was not the result upon them; that they had a feeling of resentment against appellant. But in later days, when adversities of war may become more acute, who can say what their reactions may be? Besides, the proof is that appellant has gone about to the homes of many citizens, of different stations in life and degrees of literacy and intelligence, and of all the races existing in this state—these, or some of them, may, and no doubt have, reacted to the natural re-

sult of these spoken and written words. Again, an attitude of disloyalty and disrespect to the flag and the government is not likely to be shown immediately in some overt act evidencing such attitude. This is fruit to be produced after gradual growth and maturity from the evil seeds which have been sown.

Appellant contends the statute is not valid because it prescribes no ascertainable standard of its violation. The 1918 amendment to the Espionage Act used the expression "promote the cause of its enemies—bring the flag into disrepute—or advocate any curtailment of production in this country of any thing or things—necessary or essential to the prosecution of the war—cause disloyalty—in the military or naval forces of the United States; . . . " the various sedition statutes use such expressions as "advocate, encourage—incite—to encourage or advocate disrespect for law—"; conspiracy to intimidate any citizen in the free enjoyment of any right or privilege under the Constitution; any matter which creates or fosters opposition to organized government, or intended to bring the flag or government into contempt—these and other like expressions have been held to prescribe sufficiently the standard of conduct to meet the requirements of due process of law. *State v. Boyd*; *State v. Fox*; *State v. Sinchuk*; *Whitney v. State*, *supra*; *Burns v. United States*, 71 L. Ed. 1077; *People v. Lloyd*, *supra*. It was said in *Sproles v. Binford*, 286 U. S. 374, 76 L. Ed. 1167, "To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the 14th Amendment was intended to secure." "Disloyalty" to the state or nation, or "advocates the cause of the enemies" are expressions found in the Espionage Act and the State Sedition Statutes and those state statutes intended to aid in prosecuting the war. But it is said the adjective "stubborn" before the word "refusal" to salute, honor

or respect the flag renders the Mississippi Statute void in respect to the idea under discussion. The Standard Dictionary of the English Language defines stubborn as "inflexible in opinion or intention; unreasonably obstinate; not easily bent, set aside or overcome; perseverance; persistence." Aside from the other elements contained in the statute, it can readily be understood why the jury might conclude that what was said and done here, and the reasons behind the arguments, would reasonably cause such refusal to salute, honor or respect the flag. That is conclusively shown in the cases above cited where children of the members of this sect choose to be expelled from school rather than salute the flag. There were children present on the occasion at the home of Mrs. Joyner. Illustrations of vagueness and indefiniteness are set out in note 70, L. Ed. 322. The question is not without doubt, but we do not think this law is invalid on this ground.

The suggestion is made that the offense here prescribed, if any, is treason, and punishable only according to the provisions of Article 3, Section 3 of the Constitution of the United States, and the state has no authority to legislate thereon. In the cases where this contention has been made, it has been overruled. *State v. Hennessy*, 114 Wash. 351, 195 Pac. 211; *State v. Hastings*, 115 Wash. 19, 196 Pac. 13; *State v. Hemhelter*, 115 Wash. 208, 196 Pac. 581; *Equi v. United States*, 171 C. C. A. 649, 261 Fed. 53; *Frohwerk v. U. S.*, supra; *Wimmer v. U. S.* 264 Fed. 11; *Schoborg v. U. S.*, 264 Fed. 1, petition for certiorari denied, 253 U. S. 494, 64 L. Ed. 1029; *Berg v. Oklahoma*, 233 Pac. 497.

The contention is furthermore made that the State of Mississippi had no power to enact this statute because Congress has legislated upon the same field. It is evident that as to some objects of the statute Congress has not legislated thereon, but, even if that should be true, that would not deprive the state of the power to enact this enabling legislation. See the various cases cited above under state

sedition statutes, and especially *State v. Holm*; *State v. Gibson*; *State v. Kahn*; *Commonwealth v. Widovich*; *Gilbert v. Montana*, *supra*; *State v. Fowler*, (Mont.) 196 Pac. 992; *Halter v. Nebraska*, *supra*; *Noble State Bank v. Haskell*, 55 L. Ed. 116; also note 1918 C L. R. A. 307. In the *Holm* case, the Court, in dismissing the contention that the Espionage Act had superseded the Minnesota Statute, making it unlawful for any person to teach or advocate that any citizen of that state should not aid in the prosecution of the last World War, said "The citizens of the state are also citizens of the United States and owe a duty both to the state and to the United States. The state is a part of the nation and owes a duty to the nation to support, in full measure, the efforts of the national government to secure the safety and protect the rights of its citizens and to preserve, maintain, and enforce the sovereign rights of the nation against the public enemies, and to that end the state may require its citizens to refrain from any act which will interfere with or impede the national government in effectively prosecuting the war against such public enemies. It is the duty of all citizens of the state to aid the state in performance of its duties as a part of the nation, and the fact that such citizens are also citizens of the United States and owe a direct duty to the nation does not absolve them of their duty to the state, nor preclude the state from enforcing such duty." In *Halter v. Nebraska*, *supra*, the Supreme Court of the United States, speaking through Mr. Justice Harlan, said ". . . a state may exert its power to strengthen the bonds of the union, and therefore, to that end, may encourage patriotism and love of country among its people. When, by its legislation, the state encourages a feeling of patriotism towards the nation, it necessarily encourages a like feeling towards the state. One who loves the union will love the state in which he resides, and love both of the common country and of the state will diminish in proportion as respect for the flag is weakened . . ."

We do not pass upon whether the existence of intent in the accused to bring about the objects condemned by the statute is an essential element under the statute or whether, to be valid, the statute must so provide, for the reason that under the instructions of both the state and appellant such intent was made a prerequisite to guilt, and its existence or non-existence was a fact submitted to the jury, and it necessarily found that such intent did exist. We think under all the proof and circumstances here the jurors, as reasonable men, could have found on that question as they did find.

Appellant complains of the refusal of the court to grant him certain requested instructions. We have examined the instructions and reviewed appellant's discussion thereof, and are of the opinion the lower court correctly refused all of them except instruction number four, and that, while this instruction correctly announces theoretical law, it was not applicable to the entire case made out herein, and, in view of the many other instructions granted appellant, could not have resulted in appreciable harm to him, and it is, therefore, not reversible error.

As temporary, emergency, war legislation, we think this statute is valid, and that the conviction of appellant must be upheld.

**AFFIRMED.**

[January 25, 1943]

**DISSENTING OPINIONS****IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC: No. 35143**

(Opinion rendered January 25, 1943)

**R. E. TAYLOR v. THE STATE**

**ALEXANDER, J., dissenting.**

I am constrained to believe that the equal division of opinion herein is not due to a divergence of views as to the applicable law, but rather to an application of the law. A lack of unanimity results from the relative importance attached respectively to the war effort as a temporary but sacrificial means, and to personal liberty which is its sacred end. I must confess that I see a greater danger to free speech from the controlling opinion than I can find to the war effort by the frail opinions of appellant whose inconsequence is attested by the revulsion awakened in his accusers. Nor can I detect any menace to our democratic institutions in the abstruse writings in the disseminated literature whose esoteric complexities transcend the comprehension of those who would be the likeliest to succumb to simple sophistries or who would most readily find incompatible a loyalty both to God and to country. While this literature is cast in a religious mold and propagated as a religious creed, I do not feel it necessary to invoke the right of religious freedom to justify my dissent. Literature of the type and content here exhibited has been many times held not to be hurtful to the morals or the general welfare nor seditious in character. *State v. Meredith*, 15 S. E. (2d), 678; *Donley v. City of Colorado Springs*, 40 Fed. Sup. 15; *People v. Northum*, 103 Cal. Sup. 295; *Zimmerman v. Village*

of London, 38 Fed. Sup. 582; *Oney v. City of Oklahoma*, 120 Fed. (2d) 861; *State v. Aspelin*, 203 Pac. 464.

In the dissent in *Cummings v. State*, this day decided, it was thought not inappropriate to review familiar but fundamental constitutional principles, which, because elemental, are too infrequently rehearsed.

In declaring their freedom, the founders of our republic sought to justify in their course "a decent respect to the opinions of mankind." Its continued prosperity is not to be achieved by withholding a like respect for the opinions of its own kind. The State is never called upon to indulge in mere resentment. It has no standard save the morals, peace, and safety of its people. Miss. Constn. Sec. 18. The Federal courts have no common-law jurisdiction of what is a mere slander or libel against the United States in a supposed violation of the peace and dignity of its sovereign power. *U. S. v. Hudson*, 7 Cranch. 32, 3 L. Ed. 259. *A fortiori* the state courts have not. The shore line which marks the ceaseless conflict between the tides of tyranny and the coasts of democracy suffers a fluctuating fate. There are times of high threat and seasons of ebbing power. It was but natural that there should recur periods of definite invasion and recession due to local and transitory influences. At epic intervals the tides are suddenly and effectively thrust back by the downrushing collapse of orderly democracy whose sustaining patience is undermined by the ruthless erosion of gradual and persistent encroachment, and freedom extends its frontiers in a veritable cataclysm of revolution. Only when the state has laid down its sea-wall of positive law can it say to the citizen, "Thus far shalt thou go and no further." But such bulwark is given permanent stability only when reinforced with the requirement that its limitation be marked by an actual overthrow by force or violence. *State v. Aspelin*, *supra*; *McKee v. Indiana*, 37 N. E. (2d) 940; *Bridges v. California*, 314 U. S. 252, 84 L. Ed. 149. "The danger line is reached when one strikes at the very founda-



tion of organized society by inciting rebellion in an attempt to overthrow it." *Com. v. Widovich*, 295 Pa. 311, 145 Atl. 295, *Certiorari Den.* 280 U. S. 518, 74 L. Ed. 588. "The evil itself must be 'substantial'; it must be 'serious'. And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantial evils of sufficient weight to warrant the curtailment of liberty of expression." (Citing authority.) *Bridges v. California*, *supra*. An ultimate result envisaged by an advocate and by him however hopefully predicted or zealously espoused is too vague and indefinite to constitute that "clear and present danger" to peace, morals, and safety which justifies judicial restraint of this freedom. *Fiske v. Kansas*, 274 U. S. 380; *De Jonge v. Oregon*, 299 U. S. 353; *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Schenck v. U. S.*, 299 U. S. 47; *State v. Sentner*, 298 N. W. 813.

The majority opinion asserts that freedom of speech is not the most important constitutional right of the citizen. Avoiding direct dispute, it is nevertheless appropriate to consider whether it is not in fact the keystone of the arch through which our people have passed and through which prosperity is to pass in its pursuit of happiness. Of the "four freedoms" of late enunciated as essentials of the American way of life, all involve freedom of expression. Freedom from want implies freedom to voice our needs; freedom from fear assumes a freedom to cry out if need be; freedom of religion involves the freedom to hear, to think, and to teach. The freedom from fear must include freedom from any basis for fear that forces both without and within our borders may destroy or impair fundamental liberties. This is indispensable in a democracy if the other freedoms are to be vouchsafed self-expression. Historical reference confirms the observation that democracies not only are fearful for their liberties, but in no unreal sense fear liberty. The people free to choose their form of government



are left free to work out their own political "salvation in fear and trembling." But it is more important that they are free to work it out than that they must do so under fear. A citizenship which is immoderately apprehensive for its powers and their hazards is apt to define unity in terms of unanimity and to manifest its fears in an unreasoning tendency to crush divergent ideas by the sheer weight of majority power. Zeal is apt to be an outstanding attribute of the minority, while intolerance is best nurtured in a dominating majority which would better exhibit its confidence in a democratic way of life by a patriotism which includes both confidence and courage. Courts should, if necessary, borrow such courage from the one and vigilance from the other, for it is that other whose fears are enhanced by the menace of destruction, and which finds more frequent occasion to raise the banner of freedom to justify its cause and to wield its sword in its defense. Liberty is not self-executing. "The secret of liberty is courage. A certain penumbra of contingent anarchy always confronts the state but this is entirely desirable since the secret of liberty is always, in the end, the courage to resist." Laski, *Liberty in the Modern State*, p. 80. It is seen, therefore, that public policy is after all a political consensus in which the ideals and prejudices of the individual becomes pertinent data. Courts should not attempt to imprison human personality, nor immure the creatures of conscience within its own sanctuary. We find here the spectacle of a citizen, who having released from this novel bondage a few despised opinions, is judicially held as hostage for a period which could extend for ten years. We must train our anxieties, therefore, not only upon a fancied future effect of appellant's utterances, but upon the present effect of suppressing his right to speak.

This Court would display neither courage nor vigilance in refusing to mask itself against prejudices so thoroughly diffused as to become atmospheric, lest it as a defender

of constitutional liberty constitute itself an accessory to intolerance. Nor may it import into the discussion any matters save those presented by the record. In the arena of political discussion, it is more often the persecuted minorities who are the aggressors, and who as complainants seek the courts, which, as unbiased champions of their rights, must assume, if only to ignore, the irrelevant possibility that in the midst of arms the laws are apt to be silenced by an unwonted clamor and that the barbed barricades which a war hysteria erects against the following of its prescribed course will not deal less kindly with judicial vestments. "A court in the discharge of duty under our system is required to be oblivious to public clamor, partisan demands, notoriety, or personal popularity, and to interpret the law fearlessly and impartially so as to promote justice, inspire confidence, and serve the public welfare." *Wilson v. Russell*, 1 So. (2d) 569 (Fla.). "Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of free discussion." *Thornhill v. Alabama*, 310 U. S. 88.

I approve also the language of Justice Brandeis in his concurring opinion in *Whitney v. California*, 274 U. S. 357, 375, when it was said: "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion."

"Since the general civilization of mankind I believe there have been more instances of the abridgement of the free-

dom of the people by the gradual and silent encroachments of those in power than by violent and sudden usurpation." Madison, Speech in Va. Convention, June 16, 1778. Later echoes are heard in the statement by R. Y. Hayne in the debate with Webster: "There are two distinct orders of men—the lovers of freedom and the advocates of power", and in Justice Brandeis' dissent in *Olmstead v. U. S.*, 277 U. S. 438, 72 L. Ed. 944: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."

This Court, functioning under a Constitution which declares that the people can abolish their own form of government (*Miss. Constn.*, Art. 3, Sec. 6; see also *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066), must view a conflict of mere notions with complacency. It is not unreasonable to assume that the appellant as a citizen free to express opinions of right and wrong and of policy and impolicy, and even to manifest an unwarranted pessimism in rueful prophecy, could consistently be given the floor in the forum of popular discussion to charge his accusers in turn with a form of unamericanism which denies to him that freedom of opinion which is its identifying symbol. There have appeared in our press conscientious objections to the privileges accorded to conscientious objectors to combat service. In turn there has been outspoken and conscientious objections to those who would deny to the critics of those so exempted the right to calumniate them. The ramifications of this self-energizing process in their sum are after all only public opinion of which free speech is its genius. It has of late become current wisdom that there is such a thing as a damaging optimism which may be as justly denounced as a despairing pessimism. If the former does not slow the wheels of war industry it destroys their traction. Despair is apt to expend its last ounce of energy, while blind optimism is apt to withhold its first. The Constitution does not exact wisdom of the citizen but concedes his right to folly.

That opinions weaken our war effort is no test of their legal culpability. In the recent message of the President to the seventy-eighth Congress, he said: "But there has been some criticism based on guess-work and even on malicious falsification of fact. Such criticism created doubts and fears and weakens our total effort." The opinions and decisions of the President himself find daily dissent in the outspoken criticism of the columnist and of the advertiser.

No one should encourage the dissemination of views which tend to weaken the morale of our people. Yet a true report of military setbacks is apt to have this effect. It is an anomaly that the views of those whose high position is likely to assure universal acceptance may be expressed with a ruthless and uninhibited frankness. Dire predictions of defeat are accredited as symptoms of prophetic wisdom even though the revelations be themselves deplored. It is often those whose influence is accounted without consequence, and which therefore could be ignored, who are the favored victims of popular witch-burning. The fears and mockery which their teachings foment are not unwholesome symptoms of a jealous loyalty. But the standard remains within the breast of the accuser who is apt to fall into inconsistency by seeking to pillory lesser minds not because they are hostile to the nation's welfare but rather to the critic's views.

All the State's witnesses denied any reaction to these "teachings" except derision. Forecasts of national disaster are belied by a scorn which the witnesses considered not only deserved but applauded. No propaganda can successfully assault the reason of those whose avenues to conviction are mined with contempt. The language charged to have been used by appellant was feebly prophetic and marked by bizarre predictions whose conditional form divested them of that bold assertion which alone can dissuade opposition. The record here presented, reveals a consistent revulsion against them and belies in itself a fear of their acceptance. Yet our attention has been called to no case

where an expression of personal opinion, short of the advocacy of disobedience to existing law or of the violent overthrow of our government, has been the basis of a successful prosecution. Nor are we aware of any case in our State under the Act of 1942 except against members of the particular cult of which appellant is a member. Our attention has not been called to any attempt by the Post Office Department to prohibit the use of the mails to this literature nor of our Federal Bureau of Investigation to suppress this sect, whose activities, however exposed to popular disapproval, have extended back for many years.

Since disloyalty may connote language or acts which go no deeper than a disapproval or lack of sympathy with governmental policy, it lacks a reasonably definite standard of guilt. A stronger and more sinister term is found in the New Mexico statute—the word “revolution.” Yet it was there held that since it comprises both peaceful and violent means, and only the latter may constitutionally be punished, the act was void. *State v. Diamond*, 202 Pac. 988, 20 A.L.R. 1527. We must not interpose our own personal sentiments however difficult it may be to render them invisible—into a realm where compulsions must remain self-imposed.

My views have been elaborated almost to the measure of dissertation. Yet we have been confronted with an occasion where an assumption that these principles were known and read of all men would seem to have been unwarranted.

The controlling opinion would avoid the impact of the foregoing decision by designating the Act of 1942 as war emergency legislation and deducing from this circumstance altered principles for gauging its constitutionality. No loyal citizen would contest the generality that a deplorable incident of war is the derangement of social, political, and economic life and that the emergency begets a need for standards of conduct and exercise of restraints not applicable to times of peace. I see no reason, however, to justify a sacrifice of the freedom of speech by war when war is

itself justified as a price for its maintenance. I do not gainsay the propriety, even the absolute necessity, for curbing all activities or privileges which become distorted to the point of sedition or breach of existing law. It may be that often *inter arma silent leges*, but courts have never recognized that in time of war the citizen must remain silent nor conscience inarticulate.

It will be found that the cases invoked to sustain the controlling view on this point deal chiefly with acts or advocacy which violates existing law, or which undermines the discipline or efficacy of our armed forces or the functioning of our military machine. Most of them involve violations of the Espionage Act of 1917 which contained positive prohibitions against definite conduct. Yet the purpose and scope of that Act is succinctly shown in Bishop's Criminal Law (9th Ed.), Vol. 1, p. 326, where it is stated: "The purpose of the espionage act passed by Congress on June 15th, 1917, was not to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk but only falsehoods wilfully put forward as true with intent to interfere with army and navy operations. Remote and secondary results not intended by the defendant, arising from a fair and truthful discussion of matters of public concern do not fall within its purview. Nor is the mere abuse of the president before a number of workingmen who are not in the military service an offense against it as it does not cause insubordination, disloyalty and a mutinous spirit in the military and naval forces." The Act of 1942 does not define disloyalty, and it must be conceded that neither "violence" nor "sabotage" is charged. There is "no advocacy of the cause of the enemies of the United States" nor is any other definite act specified in the statute charged save the dissemination of literature "which reasonably tends to create an attitude of stubborn refusal to salute . . . the flag of the United States." I have taken occasion to express my views on this phase of the case in the dissenting opinion



in *Clem Cummings v. State*, No. 35,155, this day decided.

Such acts or conduct must create a clear and present danger in that by force or violence the orderly processes of government will be subverted, or that its exercise of powers for the general welfare will be so hampered as to create an imminent menace to the morals, safety, or peace of the State. The most practical standard involves the advocacy of that which is criminal or unlawful either in the end or the means. This principle was adhered to in the *Stromberg*, *Herndon*, *Fiske*, *De Jonge*, *Sentner*, *Near*, *Schenck*, and *Bridges* cases, *supra*, in which there was outspoken advocacy of criminal syndicalism, communism, bolshevism, and other tenets universally deemed by loyal citizens as distinctly unamerican. Yet so long as the advocacy of religious principles remains in the domain of mere discussion, it cannot constitutionally be punished as sedition. It must bear fruitage in an overt, hostile, or treasonable act. *State v. Diamond*, *supra*; *Schoberg v. U. S.* 253 U. S. 494, 64 L. Ed. 1029; *Com. v. Widovich*, *supra*; *Reynolds v. U. S.*, 98 U. S. 162; *McKee v. Indiana*, *supra*; *Watson on the Constitution*, vol. 2, p. 1379; *Montesquieu*, *Spirit of Laws*, vol. 1, p. 194; *Schroeder*, *Constitutional Free Speech*, pp. 412, 438.

War is an emergency chiefly because our liberties are at stake. There is neither logic nor law to support the view that these liberties must be surrendered in order to be saved. In a classic expression in *Ex parte Milligan*, 4 Wall. 2, 18 L. Ed. 281, 295 the Court said: "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which

it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority." There are in fact certain constitutional rights which are illuminated by the fierce fires of war when those required to submit to equal responsibilities are given more patient hearing as to their asserted rights. It was stated in the address of the President to the Congress, January 7, 1943: "In this war of survival we must keep before our minds not only the evil things we fight against but the good things we are fighting for. We fight to retain a great past and we fight to gain a greater future." To use the phrases of war itself, liberty may not be rationed. Nor is it expendable.

The opportunity should not be waived to call attention to other significant requirements of the statute in order that they may receive an emphasis comparable to those parts stressed to sustain conviction. The statute requires that the distribution of literature and the advocacy by speech should be done not only 'intentionally' but the acts or words must be 'designed and calculated' to encourage violence, sabotage or disloyalty. In passing it is well to dispel a popular notion that the law can compel loyalty; it can only punish speech or acts which operate to or are intended and calculated to produce definite and prohibited acts. "Offenses against the espionage act are in the nature of attempts or efforts with specific intent to commit specific crimes which efforts fail though they are apparently adapted to accomplish the crime are of sufficient magnitude and proximity to the object of their operation to be reasonably calculated to excite public fear and alarm." Bishop's Criminal Law, p. 327.

War does not restrict fundamental freedoms but rather enlarges the legislative field by bringing into play new laws designed to preserve the integrity of the war effort and to protect the functioning of our army and navy. But in the



end the principle remains the same. Mere opinions even though beneath contempt are nevertheless above the law.

The controlling opinion, while willing to construe the language as subversive, finds its menace in its aspect as a forbidding symbol. Of what it is a symbol must be addressed to the suspicion or prescience of the individual judge. At its worst it could be symbolic only of underlying motives or subtle purposes, which, if true, means only opinions and not acts. Criminal laws never punish mere mental traits, nor even criminal intent alone. The virtual internment of appellant on such grounds would be tantamount to an arrest on suspicion, or an imprisonment in default of bond to keep the peace.

Were symbols important and relevant, apt example could be found in the fact that while the fate of the appellant is being considered our Government has adopted a new design for its postage stamps, honoring the 'Four Freedoms', thereby symbolizing that it respects and protects the private opinions of the writer's message not only, but also blazons to the world its own defiant stand for a freedom of speech whereby the author can, if he so desire, shout his opinion from his own housetop.

The maxim, *Salus reipublicae suprema lex est*, is a slogan both of peace and of war. But it is not the safety of the people but of their liberties which is the supreme goal. It is in war especially that our people have heroically proved that liberty is of more value than life. It is only the traitor who purchases life at the cost of a people's liberty.

This Court should say nothing that would encourage expressions of the type here involved. Yet I do not think that the emergency is such that even those deemed Philistines by their accusers should be destroyed by crushing both them and our liberty amid the wreckage of its own temple.

Anderson, J., and Smith, C. J., concur in this opinion.

IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:

No. 35143

(Opinion rendered January 25, 1943)

R. E. TAYLOR *v.* THE STATE

SMITH, C. J., dissenting.

The indictment in this case contains only one count and charges the appellant with violating not the whole of Chapter 178, Laws of 1942, but with violating the "disloyalty" and the "respect for the flag" provisions thereof, two distinct crimes which should have been charged in separate counts, but no objection has been made thereto by the appellant. The punishment prescribed by this statute is "imprisonment in the state penitentiary until treaty of peace be declared by the United States, but such imprisonment shall not exceed ten years"; and this appellant was sentenced accordingly. I will put aside this indeterminate sentence provision of the statute which in effect is but a variation of concentration camp confinement for the duration of the war, and will express no opinion thereon.

I concur in all that Judge Alexander has said, but it may not be amiss for me to specifically set forth two of the reasons why I think the disloyalty provision of this statute is constitutionally invalid. 1. As Judge Alexander has pointed out, a sufficiently ascertainable standard of "guilt" can not be found in the word "disloyalty" to satisfy the requirements of due process of law. 2. As my affirming associates admit, for the statute to be constitutionally valid it must be within—must not exceed—the state's war power. This power exists only when the nation is at war and is to enact legislation in aid of the prosecution of the war or to prevent the obstruction of its successful prosecution. Article I, Section

8, Clause 11, and Section 10 of our National Constitution. *Gilbert v. Minn.*, 245 U. S. 325, 65 L. Ed. 287, 16 C. J. S. p. 631. The disloyalty to the State or Nation condemned in this statute is not limited therein to such as may adversely affect the prosecution of this war but covers all such disloyalty whether it affects the prosecution of the war or not, and therefore is in excess of the State's war power.

I cannot close this opinion without saying that I am at a loss to perceive how the successful prosecution of the war in which we are now engaged can be so obstructed by such things as this appellant here said and did as to justify depriving our people of the blessing of the freedom they have enjoyed since our national constitution was adopted to believe, write and say what they pleased as to the policies and conduct of their state and national governments. I may not, and do not, believe what this appellant is teaching and I unhesitatingly say that until we have won this war he should refrain therefrom, but nevertheless he had the constitutional right to say and do what he here said and did. It would be well for us to pause in our prosecutions of the members of this misguided but war harmless sect (Jehovah's witnesses) and ponder the wise words of Madariaga, quoted by the late Lord Tweedmuir in "Pilgrim's Way", page 222: "A democracy that goes to war, if beaten, loses its liberty at the hands of its adversary; if victorious it loses its liberty at its own hands", and be warned thereby that if we are not to lose our liberty in winning this war, we must be careful to sacrifice it for the time being only to the extent necessary to enable us to fight the war.

Alexander and Anderson, JJ., concur in this opinion.

IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:

No. 35143

(Opinion rendered January 25, 1943)

R. E. TAYLOR *v.* STATE OF MISSISSIPPI

ANDERSON, J., dissenting:

I join with Judges Smith and Alexander in their dissents in the Jehovah's witnesses cases. I feel constrained, however, to add the following to the views they have expressed:

The statute involved, Chapter 178, Laws of 1942, page 211, is directed at treason against both the State and the United States. The title itself so states. There is involved here, however, only prosecution for treason against the State. The fourth paragraph of the preamble to the statute is in this language: "Whereas, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the State of Mississippi are a menace to the safety of this [state] and these United States." Section 1 of the enacting provision follows: "Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by

action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create any attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the State of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States, but such imprisonment shall not exceed ten years."

The Constitution of the State, Section 10, defines treason against the State and the evidence necessary to convict of the crimes in this language: "Treason against the state shall consist only in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." That is exactly the same language used in Article 3, Section 3 of the Constitution of the United States except the words "United States" in place of the words "the state". Insurrection, sedition, sabotage and syndicalism are merely elements which go to make up treason. 33 C. J. Page 159, Sections 4, 12, 13 and 14. When the proposition is squarely presented to the Supreme Court of the United States my opinion is that Court should and will hold that the constitutional definition of treason can neither be added to or taken from by legislation; that the constitutional definition is complete and exclusive. The early lower federal court decisions so held without exception. See *U. S. v. Burr*, (C. C. Va. 1807), 4 Cranch (Appendix) 455, 25 Fed. Cas. No. 14692a. In that case the court said, "The people have refused to trust the national legislature with the definition of the crime of treason". *U. S. v. Greathouse* (C. C. Cal 1863) 4 Sawy. 457, 26 Fed. Cas. No. 15254; *U. S. v. Werner*

(D. C. Pa. 1918) 247 Fed. 708. A mere conspiracy to overthrow the Government, however atrocious, does not of itself constitute treason. "The intention and the act, the will and the deed, must concur." *U. S. v. Mitchell* (C. C. Pa. 1795), 2 Dall. 348, 1 Law Ed. 410, 26 Fed. Cas. No. 15788. *U. S. v. Fricke* (D. C.N. Y. 1919), 259 Fed. 673. Mere words, oral, written or printed, however treasonable, do not constitute an overt act of treason within the definition of the crime. 5 Blatchf. 549, 30 Fed. Cas. No. 18271. 1 Bond 609, 30 Fed. Cas. No. 18272. War can only be levied by the employment of actual force. "Troops must be employed, men must be assembled, in order to levy war." *U. S. v. Burr*, *supra*. (These cases digested in *U. S. C. A.*, Title 18, pages 5-8, inclusive.)

Under Article 5 of the Constitution of the United States, that instrument can be amended, changed or repealed in its entirety, and another Constitution adopted, provided the proposal is properly made and ratified by the Legislatures of three fourths of the United States. In other words, the Federal Government is given power, to be exercised in the manner provided by that article, to legally repeal the Constitution in whole or in part, and if repealed in whole, adopt another of any kind or character whatsoever. In other words, our Democracy could legally "commit suicide." It could adopt a dictatorship in its place. This could not, however, be brought about by force of arms. The change would have to be by peaceful means. But it would be permissible for private individuals, public assemblages and public press and otherwise to advocate the change. Provided, of course, the limit would be treason against the Government, as defined by the Constitution.

It is true that the constitutional war powers of the Congress, as provided in paragraphs 1-16, inclusive, of Article 8, are large. And in order to successfully conduct a war many constitutional provisions may be ignored, but not all of them. The freedom of speech, freedom of religion, and freedom of the press, the three most outstanding constitu-

tional rights, are not entirely wiped out for the purposes of war. Suppose Congress should declare that the doctrines of a certain religious organization are hampering the country's war efforts and make it a crime to further advocate them. Would the members of the society have to lay aside and repudiate their religion during the war? Suppose Congress should declare that neither by word of mouth nor by means of the public press the conduct of the war should be criticized, and make it a crime so to do. In my opinion those three fundamentals cannot be abridged to any extent in time of peace, and very little, if any, in time of war. In the past the attempt to destroy any religious sect has resulted in its permanent establishment and growth. Take, for illustration, the Mormon religion,—the founder, Smith, was assassinated on account of his religion. The members, to a large extent, were driven out of the east into the new west; and now in the state of Utah it is the outstanding religion of that State, with many times more members than any other religious organization.

What has been written above applies as well to the case of *Clem Cummings v. State*, this date decided.



**Judgment**

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY MORNING, JANUARY 25th, 1943

MINUTE BOOK BH—PAGE 89

R. E. Taylor  
35143 vs.  
State

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Madison County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the June 1942 Term—a conviction under Chapter 178, General Laws of Mississippi 1942 and a sentence to the State Penitentiary for the duration of the war or not to exceed 10 years—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Madison do pay the costs of this appeal to be taxed, etc.



## Assignment of Errors

MISSISSIPPI SUPREME COURT

No. 35143

STATE OF MISSISSIPPI *v.*

R. E. TAYLOR, *Appellant*

Now comes appellant and assigns the following as error in the lower court, to wit:

### ONE

The court erred in refusing and overruling appellant's motion to quash the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said motion is made a part of this assignment of error. Said motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

### TWO

The court erred in refusing and overruling appellant's demurrer to the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said demurrer is made a part of this assignment of errors. Said demurrer appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

### THREE

The court erred in refusing and overruling appellant's motion for peremptory instruction requesting the trial court to exclude the evidence of the State and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of State's evidence and presented to the court in the manner required by law. Each ground of said motion for peremptory instruc-

tion is made a part of this assignment of errors. Said motion appears in the typewritten record and in this court is incorporated herein and made a part hereof as though written at length herein.

#### FOUR

The court erred in refusing and overruling appellant's motion for a directed verdict requesting the trial court to exclude all the evidence and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of all the evidence and presented to the court in the manner required by law. The motion for directed verdict reads, omitting formal parts, as follows:

Now comes the above named defendant, R. E. Taylor, in the above entitled and numbered cause and files this his MOTION FOR DIRECTED VERDICT, and as grounds therefor says:

#### ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of their rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment of the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative

Session 1942, is unconstitutional as construed and applied to the activity of this defendant because Section 1 thereof deprives this defendant of his inherent rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite, and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2

thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a drag-net, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

#### EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt, and the undisputable evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

WHEREFORE defendant prays that upon consideration hereof the Court instruct the jury to acquit the defendant and by their verdict say, "We the jury find the defendant not guilty," and render a judgment dismissing the indictment and discharging the defendant with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

#### FIVE

The verdict of the jury is contrary to law.

## SIX

The verdict of the jury is not supported by any evidence.

## SEVEN

The judgment of the court is contrary to the law and the evidence.

## EIGHT

The undisputed evidence shows that appellant is not guilty.

## NINE

The statute in question is unconstitutional on its face because, by its terms, it denies and deprives persons in Mississippi of their rights of freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

## TEN

The statute in question as construed and applied to the facts and circumstances is unconstitutional and denies appellant his rights of freedom of conscience, of press, of speech and of worship of Almighty God, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

## ELEVEN

The statute in question, both on its face and as construed and applied, violates the *due process* and the *equal protection* clauses of the Fourteenth Amendment to the United States Constitution, and is contrary to Section 14 of Article 3 of the Mississippi Constitution, because it is vague, indefinite, uncertain, too general, does not furnish a sufficiently ascertainable standard of guilt, enables the court and jury trying the indictment to speculate, permits arbitrary and discriminatory action and amounts to a dragnet, thus de-

priving appellant of his liberty without equal protection and due process of law.

### T W E L V E

The statute in question is in excess of the police power of the State because it unlawfully invades the realm of legislation impliedly delegated to the Federal Government. The statute is superseded by federal legislation pertaining to the United States flag, the present national emergency and the war now being waged between the Axis powers and the United States Government, and therefore duplicates federal legislation and encroaches upon federal powers, and thus deprives appellant of his rights in violation of the United States Constitution.

### T H I R T E E N

Appellaat hereby reserves the right to amend the assignments of error, incorporating and including additional errors reflected in the record at a time before the term begins at which this case will be argued.

### F O U R T E E N

The State wholly failed to offer any evidence to show guilt on the part of appellant, since the undisputed evidence showed that appellant was not guilty of the acts charged in the indictment. The States wholly failed to show that the literature distributed by appellant was calculated to encourage disloyalty to the Government, caused racial distrust, disorder, prejudice or hatreds, or reasonably tended to create an attitude of refusal to salute the flag.

### F I F T E E N

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER ONE, reading as follows:

"You are instructed that there is no statute or law of the State of Mississippi which requires an adult

person not in attendance at the public schools to perform the salute to the American flag or any flag, and in arriving at your verdict you cannot consider the fact that the defendant refused to salute or now refuses to salute the American flag."

#### SIXTEEN

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER TWO, reading as follows:

"You are instructed that words spoken or printed must be more than a theoretical discussion, and before such can be made the basis of a conviction, you must find from the evidence beyond a reasonable doubt that such words are of such a nature as to create a clear, immediate and present danger that they will bring about the overthrow by force and violence of the Constitution, laws and government of the State of Mississippi and the United States, which you must find from the evidence beyond a reasonable doubt to be a clear, immediate and present danger. If you fail so to find or have a reasonable doubt thereof, defendant is entitled to an acquittal."

#### SEVENTEEN

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER FOUR, reading as follows:

"You are instructed that the defendant has a legal right to print, sell, publish, circulate and otherwise distribute literature which attacks any religious principle, dogma, or doctrine, or any political belief, dogma, or doctrine, and to persuade others to that point of view the defendant may resort to exaggeration, to vilification of men who have been or are prominent or low in church and state, and even may resort to false

statements for this purpose, because the people through the Constitution have ordained in the light of history, that in spite of excesses and abuses this liberty is essential to enlightened opinion and democracy, and if there is any evidence of such you will not consider it in arriving at your verdict."

### E I G H T E E N

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER SIX, reading as follows:

"You are instructed that according to Section 6 of Article 3 of the Constitution of the State of Mississippi the people of this State have the inherent right to alter and abolish their form of government whenever they deem it necessary to their safety and happiness, and every person has the right to advocate a change in the form of government provided that he does not advocate the overthrow thereof by force and violence; and if you find or believe from the evidence, or have a reasonable doubt, that the defendant advocated the establishment in due time of God's Kingdom described by the defendant as Jehovah's Theocracy, as foretold in the Bible, and if you find and believe from the evidence, or have a reasonable doubt, that the defendant in advocating the establishment of such Theocracy does not urge a change in the present form of government by force and violence, you will acquit the defendant and by your verdict say: 'We the jury find the defendant not guilty.'"

### N I N E T E E N

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER NINE, reading as follows:

"You are instructed that according to the case of



Ex parte Milligan, decided by the Supreme Court of the United States during the Civil War, reported in 4 Wall. 2, 'The Constitution of the United States is a law for *rulers* and people equally in war and peace; it covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the mind of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy and despotism. But the theory of necessity on which it is based is false for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence.'

#### T W E N T Y

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER ELEVEN, reading as follows:

"You are instructed that the defendant has the right to worship Almighty God according to the dictates of the heart, to adopt and to hold any opinion whatsoever on the subject of the Bible, and to do any act such as to distribute the literature in question, or to forbear to do any act such as to refuse to salute the flag of the United States, the doing or the forbearing of which does not seriously and immediately endanger the public morals, health and safety."

#### T W E N T Y - O N E

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER FIFTEEN, reading as follows:

"Freedom of speech and freedom of the press are guaranteed and protected by the Constitution of Mis-

Mississippi and of the United States, and this liberty is not confined to newspapers but necessarily embraces pamphlets and leaflets pertaining to matters of government and the Bible. If you find and believe from the evidence or have a reasonable doubt that defendant was engaged in activity of 'free press' and 'free speech' you will acquit the defendant and you by your verdict will say: 'We the jury find the defendant not guilty.'"

### T W E N T Y - T W O

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER EIGHTEEN, reading as follows:

"The court instructs the jury for the defendant that it takes 12 jurors to bring in a verdict of 'Guilty', and if any one of the jurors disagrees as to guilt of the defendant, then the form of the verdict should be, 'We, the jury, cannot agree.'"

### T W E N T Y - T H R E E

The trial court committed reversible error in overruling the motion for new trial because the verdict was contrary to overwhelming weight of the evidence.

GROVER C. CLARK

HAYDEN C. COVINGTON

Attorneys for Appellant

### Docket Entries

GENERAL DOCKET C-C, Supreme Court of Mississippi  
Docket Entries:

Case No. 35143 R. E. Taylor *vs* State

Circuit Court, Madison County

Certificate filed 7/4/42

Record & P. O. filed 9/18/42

Assignment of Errors: G. C. Clark, G. C. Powell,

Hayden C. Covington—9/7/42

Carbon copy Assignment of Errors: G. C. Clark, G. C. Powell, Hayden Covington—9/7/42

6 Exhibits—Booklets—9/18/42

2 Exhibits—Yellow Cards—9/18/42

Brief of Appellee—Geo. H. Ethridge—10/16/42

2 Carbons Brief of Appellee—Geo. H. Ethridge—10/16/42

Petition for Writ of Certiorari—Hayden Covington—10/17/42

Carbon Petition for Writ of Certiorari—Hayden Covington—10/17/42

Answer to Petition for Writ of Certiorari—Geo. H. Ethridge—10/19/42

Petition for Writ Withdrawn—Hayden Covington—10/23/42

Amended Assignment Errors—Hayden Covington—10/24/42

Second Amended Assignment Errors—Hayden Covington—10/24/42

6 Briefs of Appellant—Hayden Covington—6/24/42

6 Books—"Children"—Hayden Covington—10/24/42

Argued and Submitted 10/26/42 BH 48B

Notified G. C. Clark, Hayden Covington & Sheriff, Madison County fixing Jan. 25 for Judgment—1/19/43

Jan. 25, 1943 is set for appellant to appear 1/18/43 BH 86 In Banc

Affirmed 1/25/43 In Banc BH 89

Petition for 90 days stay, pending appeal—G. C. Clark, H. C. Covington—2/1/43

Carbon Petition for 90 days stay, pending appeal—G. C. Clark, H. C. Covington—2/1/43

Bond for appeal to U. S. Court 2/2/43

Order Staying Judgment—2/2/43

[Same Caption Omitted in Printing]

**Petition for Appeal, Statement,  
Assignments of Error and  
Prayer for Reversal**

**Petition for Appeal**

Being aggrieved by the final decision of the Supreme Court of the State of Mississippi, and the judgments of the courts below, in the above entitled cause, the appellant herein hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

**Statement**

This case is one in which is challenged the validity of a statute of the State of Mississippi, known as Chapter 178, General Laws of Mississippi, which, when stripped of its preamble and sections 2, 3, 4, 5, 6 and 7, which are not involved, reads:

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States

or who gives information as to the military operations, or plants of defense or military secrets of the nation or this State, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years."

This statute was duly passed and approved by the Legislature of the State of Mississippi and is here drawn in question upon the ground that said statute is repugnant to the First and Fourteenth Amendments to the United States Constitution. The Supreme Court of the State of Mississippi is the court of last resort in this cause in the State of Mississippi in which a decision could be had and the decision of that court is in favor of the validity of said statute.

Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U.S.C. sec. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U.S.C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Mississippi, court of last resort in this cause in the State of Mississippi, rendered its decision herein on the 25th day of January, 1943, which became final on January 25, 1943, and by its said decision affirmed the judgment of the Circuit Court in said cause. The opinion of said Supreme Court of the State of Mississippi has not yet been officially reported but

is of record unofficially: *Taylor v. State of Mississippi*, 11 So. 2d 663. That opinion appears in the record at page 140, and will appear at 194 Miss. . . .

The order and judgment of affirmance by said Supreme Court of the State of Mississippi entered in the office of the Clerk of the said Court on January 25, 1943, became a final judgment on the same day, the date when the opinions were filed in said cause.

### **Assignments of Error**

Now comes appellant in the above cause and files herewith, together with said petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

**FIRST:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

**SECOND:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

**THIRD:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the State's evidence.

**FOURTH:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

**FIFTH:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a new trial duly and timely filed.

**SIXTH:** The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

**SEVENTH:** The Supreme Court of Mississippi erred in failing to hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

**EIGHTH:** The Supreme Court of Mississippi erred in failing to hold that on its face and as construed and applied the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

**NINTH:** The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.



**TENTH:** The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 4.

**ELEVENTH:** The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 9.

### **Prayer for Reversal**

For and on account of the above errors appellant prays that the said judgment of the Supreme Court of the State of Mississippi hereinabove described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for costs.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

[Same Caption Omitted in Printing]

### **Order Allowing Appeal**

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Mississippi on the 25th day of January, 1943, affirming the judgment of the Circuit Court in said cause there titled, to wit, R. E. Taylor, appellant v. State of Mississippi, appellee.

It appearing that the appellant in the assignments of error and in said cause before argument attacked the



statute in question on the grounds, as contended by appellant, that it unreasonably abridges freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and that it is void because of vagueness, and in conflict with federal legislation on the same subject, and because there was not evidence to sustain the conviction, all of which contentions were overruled by decision and judgment of the said Supreme Court of the State of Mississippi previously rendered herein.

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of the State of Mississippi became final on January 25, 1943, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

IT IS NOW HERE ORDERED that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Mississippi, and the said judgment of the Circuit Court, in aforesaid cause as provided by law, and,

IT IS FURTHER ORDERED that the Clerk of the Supreme Court of the State of Mississippi shall prepare and certify to the printed transcript of the record, proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States together with all exhibits in the original form, so that he shall have the same in said Court within twenty (20) days from date.

AND IT IS FURTHER ORDERED that security for costs on appeal be fixed in the sum of Two Hundred and Fifty (\$250.00) Dollars and appellant having heretofore presented and filed an undertaking in the sum of One Thousand (\$1000.00) Dollars executed by the National Surety Corporation, which provides for the appearance of the appellant to abide by the judgment of this court and

also to cover the costs of appeal to the United States Supreme Court which has been approved by the court, it is ordered that no additional bond to cover costs be required.

Dated, March , 1943.

**SIDNEY SMITH**

Chief Justice of the  
Supreme Court of the  
State of Mississippi

[Same Caption Omitted in Printing]

### **Citation**

To THE STATE OF MISSISSIPPI and

Its Counsel of Record in the above-entitled cause,  
and

To The Attorney General of the State of Mississippi  
Greeting

You are hereby cited and admonished to appear at a Supreme Court of the United States, at Washington, in the District of Columbia, within twenty (20) days from the date hereof, pursuant to an appeal, filed in the Clerk's office of the Supreme Court of the State of Mississippi, where R. E. Taylor is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Sidney Smith, Chief Justice of the Supreme Court of the State of Mississippi, this .. day of March, in the year of our Lord one thousand nine hundred and forty-three.

**SIDNEY SMITH**

Chief Justice of the  
Supreme Court of the  
State of Mississippi

**Bond**

[Filed 2/2/43 Tom Q. Ellis, Clerk]  
IN THE SUPREME COURT OF MISSISSIPPI  
No. 35143

R. E. TAYLOR, appellant, v. STATE OF MISSISSIPPI.

**APPEARANCE and COST BOND ON APPEAL  
to UNITED STATES SUPREME COURT**

WHEREAS, on the 25th day of January, 1943, an Opinion was filed by this Court in the above captioned and numbered case, affirming the judgment and sentence of the Circuit Court of Madison County of June 30, 1942, which judgment was adverse to the Appellant;

WHEREAS, appellant, R. E. Taylor, being dissatisfied with said judgment, desires and intends to file an appeal in said matter to the Supreme Court of the United States;

WHEREAS, it is estimated that the costs of Circuit Court, Supreme Court of Mississippi and Supreme Court of the United States will not exceed the sum of \$250.00;

WHEREAS, by Order of Court a bond in the amount of (\$1000.00) Dollars was fixed by the Court to act as an appearance appeal bond and cost bond on appeal to the United States Supreme Court, to be executed and filed by the appellant;

NOW, THEREFORE, Know All Men by These Presents, That we, R. E. Taylor, as principal, and the undersigned as sureties, do hereby acknowledge ourselves, our heirs, our executors and successors firmly bound unto the State of Mississippi in the sum of

(\$1000.00) Dollars. The condition of the bond is such that if the appellant, R. E. Taylor, shall prosecute his appeal with effect to the United States Supreme Court and appear before this Court upon the return of the mandate from the United States Supreme Court and abide by the

judgment to be entered and pay all costs incurred in the United States Supreme Court by reason of said appeal that such bond and obligation here incurred shall become null and void; however, if the said R. E. Taylor shall not prosecute his appeal with effect and if he fails to appear before this Court and abide by the judgment entered against him the said bond and obligation shall remain in full force and effect.

WITNESS our hands and the seal of the surety corporation on this the 2nd day of Feb. 1943.

(Sgd) Ralph E. Taylor  
R. E. TAYLOR, Principal

NATIONAL SURETY CORPORATION

[Seal]

By (Sgd) F. Wallace

Its Attorney in Fact As Surety

(Sgd) G. C. Clark  
Witness

(Sgd) C. A. Rawls  
Witness

Approved and ordered filed  
on this the 2d day of Feb. 1943

(Sgd) Sydney Smith  
Chief Justice of the  
Supreme Court of Mississippi

[Same Caption Omitted in Printing]

### **Statement of Points to Be Relied Upon**

Comes now appellant in the above-entitled cause and states that the points upon which he intends to rely in this Court in this cause as follows:

Point 1. The Supreme Court of the United States should hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 2. The Supreme Court of the United States should hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 3. The Supreme Court of the United States should hold that on its face and as construed and applied, the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

Point 4. The Supreme Court of the United States should hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

Point 5. The Supreme Court of the United States should hold that a general verdict will not support a conviction where the undisputed evidence shows that either ground of

conviction violates the constitutional rights of appellant or where one of the provisions of the statute containing the conviction is unconstitutional.

**G. C. CLARK**

**HAYDEN C. COVINGTON**

*Attorneys for Appellant*

[Same Caption Omitted in Printing]

### **Receipts for Transcripts of the Record**

**TO HONORABLE TOM Q. ELLEN, Clerk of the Supreme Court of Mississippi**

You will please prepare a printed copy of the undersigned brief in the above entitled and numbered cause in the Circuit Court and the Supreme Court of Mississippi, for the purpose of filing an appeal with the Clerk of the United States Supreme Court. The record should contain the following documents:

(1) All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all motions filed herein.

(2) Petition for allowance of appeal to the Supreme Court of the United States, Statement, Compendium of Facts and Prayer for Reversal.

(3) Jurisdictional statement.

(4) Order allowing appeal to the Supreme Court of the United States.

(5) Statement of points to be raised upon in the Supreme Court of the United States.

(6) Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

(7) Brief for writs in appeal to the Supreme Court of the United States.

(8) Veritas calling Appellant's attention to paragraph 1 of Rule 12 of Rules of the Supreme Court of the United States.

(9) Copy of stipulations waiving right to file papers in opposition to introduction of report.

(10) This Form may be transmitted at the same time.  
 Dated March 1962

G. C. CLARK  
 HATDEN C. COWINGTON  
 Attorneys for Appellants

Case Captioned as Above

**Notice Calling Appellants' Attention to  
 Paragraph 1 of Rule 12 of Rules of the  
 Supreme Court of the United States**

Sirs:

It is well to advise you that paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States provides that the appellants may file with the Clerk of the Court, accompanied by the record, within 11 days after meeting of the preliminary conference and other papers in support of the appellants' statement. Accordingly, any matter is presented for consideration by the preliminary of the Supreme Court of the United States submitted by the appellants, which will be thereby subject to some questions as to whether by the Rules of the Supreme Court of the United States.

Dated, March 1962

G. C. CLARK

HATDEN C. COWINGTON

Attorneys for Appellants

The Honorable J. Edgar Hoover

Attorney General and

Director of the Federal Bureau of Investigation

U. S. Department of Justice

Washington, D. C. 20535

[Same Caption Omitted in Printing]

### **Acknowledgment of Service**

On behalf of the Appellee in the above entitled cause, service is hereby acknowledged of a printed copy of the record containing copies of the following documents, to-wit:

1. All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

2. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

3. Jurisdictional statement.

4. Order allowing appeal to the Supreme Court of the United States.

5. Statement of points to be relied upon in the Supreme Court of the United States.

6. Praecept for transcript of the record.

7. Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

8. Bond for costs on appeal to the Supreme Court of the United States.

9. Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

10. Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

Dated, March , 1943.

**GEORGE H. ETHRIDGE**

*Assistant Attorney General  
Counsel for Appellee*



## Stipulation

It is hereby stipulated that the papers hereinbefore printed comprise true and correct copies of the record from the Circuit Court and Supreme Court of the State of Mississippi and that printing of all exhibits is omitted and said exhibits shall be submitted in original form to the Supreme Court of the United States.

Dated, March , 1943.

GEORGE H. ETHRIDGE  
Assistant Attorney General  
*Counsel for Appellee*

HAYDEN C. COVINGTON  
117 Adams St.  
Brooklyn, New York  
*Counsel for Appellant*

## Clerk's Certificate

STATE OF MISSISSIPPI, COUNTY OF HINDS, ss:

I, Tom Q. Ellis, Clerk of the Supreme Court of Mississippi, do hereby certify that the next foregoing . . . . . pages contain a full, true and complete printed copy of all the papers, pleadings, proceedings requested in appellant's praecipe for the record on appeal to the United States Supreme Court in the case entitled R. E. TAYLOR v. State of Mississippi, and Numbered 35143 on the docket of the Supreme Court of Mississippi as the same appears on file in and of record in my office and in our said court.

Given under my hand and seal of office this the 13th day of March, 1943.

TOM Q. ELLIS, Clerk  
Supreme Court of Mississippi  
[SEAL]

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

■

R. E. TAYLOR, *Appellant*

*v.*

STATE OF MISSISSIPPI, *Appellee*

■

APPEAL FROM THE SUPREME COURT OF  
THE STATE OF MISSISSIPPI

## STATEMENT AS TO JURISDICTION

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files a *statement as to jurisdiction* disclosing the basis upon which it is contended that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

### Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

## **Mississippi Legislation Questioned**

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

### **HOUSE BILL No. 689**

**AN ACT** to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.

**WHEREAS**, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and

**WHEREAS**, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and

**WHEREAS**, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative department of the state of Mississippi and of these United States shall enact all laws and do all things necessary to insure domestic tranquility and promote the common defense and general welfare of the people thereof; and

**WHEREAS**, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state

of Mississippi are a menace to the safety of this State and these United States.

NOW, THEREFORE,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Sec. 2. Any person in possession of maps or parts of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, transportation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the inten-



tion of such persons to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding \$1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the courts, such decision shall not be construed so as to render invalid the remainder of this act.

Sec. 7. That this act shall take effect and be in force from and after its passage.

Approved March 20, 1942.

The Circuit Court which is the trial court and the appellate court, the Supreme Court of Mississippi, held the statute was not unconstitutional and that it was not superseded by federal statutes on the same subject. Such

courts refused to hold that the statute on its face and as construed and applied to the facts abridged the rights of freedom to worship Almighty God, freedom of conscience, of press and speech contrary to the 1st and 14th Amendments to the United States Constitution. Said courts also held that the statute was not vague, indefinite, too general and a dragnet as construed and applied.

### **Timeliness**

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 140) The petition for appeal and other papers required by the rules of this court are filed within three months from the date of such judgment. R. 194-206.

### **Opinions**

The opinion of the Supreme Court is reported in 194 Miss. pp. — and in 11 So. 2d 663. It appears also in the record pages 140 to 163. The opinion is also attached hereto as appendix to this statement.

### **Statement of Nature of the Case and Rulings of Court Bringing Case Within Jurisdictional Provisions Relied Upon**

In the Circuit Court of Madison County, Mississippi, the appellant, R. E. Taylor, was indicted by the grand jury. The indictment returned and filed reads as follows:

### **Indictment**

**MADISON COUNTY CIRCUIT COURT**

**June Term, A. D. 1942**

**STATE OF MISSISSIPPI, MADISON COUNTY**

**THE GRAND JURORS** of the state of Mississippi,  
taken from the body of good and lawful men of Madison

County, elected, empaneled, sworn and charged in inquire in and for said County at the Term aforesaid of the County at the Term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that R. E. TAYLOR AND MRS. R. E. TAYLOR late of the County aforesaid, on the 29th day of June A. D. 1942, at the County aforesaid did then and there wilfully, intentionally, unlawfully, and feloniously teach and disseminate teachings orally in that they said to Mrs. T. K. Joyner, Mrs. W. B. Denson, Mrs. Huston Bryant, and other persons whose names are at this time unknown to the Grand Jury, *"It is wrong for the President to send the army across for they are just being shot down for nothing. Hitler will rule, he will not come over here to do it. He won't have to. If we would quit kneeling and worshipping our flag peace would come to us, and study and learn this literature and worship in the right way peace would come to earth, but as long as we go around worshipping our flag and government, we will never have peace, for we just worship our flag and government for our religion"*, and in that they said to the same parties, *"It is wrong for the President to put our boys in uniform and send them across. The sooner we quit bowing down to the flag that much sooner we will have peace."* and that they said to Mrs. T. K. Joyner and Mrs. W. B. Denson that their boys might have thought they were doing right, but that it is wrong to fight our enemies; and other words and teachings all said teachings and words were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America and the State of Mississippi. And did then and there wilfully, intentionally unlawfully, and feloniously distribute literature and printed matter in that they did hand out and distribute to Mrs. T. K. Joyner, Mrs.

Houston Bryant, Mrs. W. B. Denson, and other persons whose names are unknown to the Grand Jury at this time, books and pamphlets entitled GOD AND THE STATE which contain the statement, "Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment—", and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled REFUGEES which contain the statements, "All nations of the earth today are under the influence and control of the demons . . . All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is on the losing side. All of such nations are against the Theocratic Government, that is the government or kingdom of the Almighty God . . . All are under the control of the invisible host of demons." and which contains other paragraphs and statements of dis-

loyalty to the United States of America; and books and pamphlets entitled LOYALTY which contain the statement, "For the Christians to salute a flag is in direct violation of God's specific commandment", and which contain other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled END OF THE AXIS POWERS, COMFORT ALL THAT MOURN which contain the statement, "Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world.", and which contain other paragraphs and statements of disloyalty to the United States of America; all of said literature, printed matter, books and pamphlets were published by Watchtower Bible and Tract Society, Inc., International Bible Students Association, and were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States of America, and the State of Mississippi contrary to the form of Statute in such case made and provided, and against the peace and dignity of the State of Mississippi.

H. B. Gillespie  
DISTRICT ATTORNEY

Appellant filed and urged a motion to quash the indictment (R. 10-12), which was overruled and exception allowed. (R. 13) A demurrer to the indictment was duly filed and urged (R. 13-16), which was overruled and exception allowed. R. 16.

Appellant pleaded "not guilty". R. 17.

At close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 92-94), which was overruled and exception allowed. (R. 94) At the close of the entire case and when both parties had rested their case appellant duly filed a motion for directed verdict requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 135-138), which was overruled and exception allowed. (R. 138) A motion for new trial was filed complaining of each of the foregoing rulings, which was overruled. R. pp. 37-39.

Under grounds 1 and 2 of the motion to quash (R. 10-11) the demurrer (R. 14), the motion for peremptory instruction (R. 92), and the motion for directed verdict (R. 135-136), appellant attacked the statute on the grounds that on its face, by its terms, and as construed and applied it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the first and fourteenth amendments to the United States Constitution. R. 10-11, 14, 92; 135-136.

Under grounds 4 and 5 of the motion to quash (R. 11), demurrer (R. 15), motion for peremptory instruction (R. 93), and motion for directed verdict (R. 136-137), appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated section 1 of the Fourteenth Amendment to the United States Constitution. R. 11, 15, 93, 136-137.

In the Supreme Court of Mississippi under assignments of error numbers 1, 2, 3, and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 183-184) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and of worship, contrary to the 1st and 14th Amendments. (R. 187) Under ground 11 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the 14th Amendment. R. 187.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered and overruled the same. (R. 140-163) The court held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press contrary to the federal constitution. (R. 144) The court held that as construed and applied that the rights of freedom of speech, and of press were not abridged contrary to the first and fourteenth amendment. (R. 144-156) The court held that freedom of worship of Almighty God was not impaired by the conviction and judgment. R. 156-159.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of the validity of the same.

### **Statement of Facts**

Appellant is a native of Alabama. He is an ordained minister of Jehovah God and a witness for His Kingdom of righteousness. He is classified by his local draft board in Class IV-D, the classification of all ministers. (R. 106) During the first World War he volunteered for service and after serving eighteen months he purchased his release.



(R. 126) Thereafter he joined the army again and served until 1931 when he was discharged. (R. 134) He has been one of Jehovah's witnesses for approximately twenty years and a full-time "pioneer" minister preaching the gospel together with his wife for about eleven years. (R. 106, 118) He came to Canton, Mississippi, about three months before the trial to perform missionary work from house to house among the people. (R. 117) During this time he and his wife worked together and lived together at Canton. (R. 104, 107) Appellant was ordained by Jehovah God according to the scriptures recorded at Isaiah 61: 1, 2. He preaches by distributing Bible literature from house to house among the people. This is the method commanded by Almighty God in the Scriptures. (Isaiah 43: 9-12; Matthew 24: 14; Acts 20: 20; Acts 5: 42; Acts 3: 23; 1 Corinthians 9: 16) R. 123, 105.

In the latter part of May, 1942, he called at the home of Mrs. Houston Bryant and placed two books with her while working the neighborhood from house to house. (R. 46) One of these books entitled *Children* was introduced in evidence at the trial. (R. 54) During the early part of June, 1942, appellant called back in that neighborhood at the home of Mrs. Joyner, who lived across the street from Mrs. Bryant. Mrs. Bryant was at the home during the time of appellant's visit. (R. 46) Mrs. Joyner and Mrs. Bryant each obtained a combination of twenty-two books and each gave appellant thirty-five cents for same. R. 47.

Prior to the time of this visit, the women had heard of Jehovah's witnesses and had been told by Mr. Vallia O'Neal, local official of the American Legion (R. 63), and Mr. Nelson Cauthen, County Attorney, that Jehovah's witnesses were against the government as were the books they distributed. (R. 58) These officials advised the women to obtain the books as evidence against appellant. Both women admitted that they were prejudiced against appellant before he called and that they were entrapping appel-



lant for the Legionnaires and the prosecuting attorney. R. 63-64, 66.

Appellant knew that Mrs. Joyner had lost a son in the Pearl Harbor disaster of December 7, 1941. The women said that he stated he was calling to comfort Mrs. Joyner. (R. 59) The women could not remember the substance of the conversation that then took place or any particular words used, except those words described in the indictment which they recalled clearly and verbatim. (R. 47-48, 58, 69, 90) During the course of the conversation in which appellant explained Bible prophecy and the books and booklets distributed, the ~~two~~ women accused appellant of saying:

"... it was wrong for our President to send these boys across in uniform to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come here to rule; and he said the quicker the people here quit bowing down and worshipping and saluting our Flag and Government, the sooner we would have peace. . . . He said it was wrong for us to fight our enemies; that we were being shot down for no purpose at all." *Mrs. Bryant's testimony*, R. 47-48.

"... the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there." *Mrs. Joyner's testimony*, R. 69.

The women said that appellant arrived at the house with his wife and a little girl accompanying him. (R. 74) That appellant had his Bible with him and he began to talk about the beast with seven heads and ten horns, described in Revelation, as totalitarian or Hitler-rule.

(R. 75) That he quoted Daniel 2: 44—"In the days of these [totalitarian] kings shall the God of heaven set up a kingdom which shall never be destroyed; and . . . it shall break in pieces and consume all these kingdoms, and it shall stand forever." Appellant said to Mrs. Joyner that her boy would be resurrected and come back and live with her forevermore, and that she would see him again on earth under conditions like heaven on earth. (R. 75-76) They were advised by appellant that there were two divisions of people, one a sheep class, and the other a goat class; and that they would have to study the literature to learn how to become of the sheep class. (R. 81) That appellant said that he was not selling the books but was distributing them to the people to show them the right way to live and to teach their children. (R. 55) Appellant quoted much scripture to them and stated that this would be the last war before Armageddon. R. 64.

It is not clear whether the women read all the books they obtained or not. Mrs. Bryant said that she had read the passages from the various books introduced by the prosecuting attorney into the evidence. (R. 53) However, it appears that all the books were immediately turned over to the prosecuting attorney. R. 64, 73.

Each woman testified that the statements made by the appellant did not make them feel against the government. It did not make them feel against the Flag. That they loved the government more after reading the literature and listening to appellant than before. R. 62, 91.

During the latter part of May or the first part of June, 1942, appellant and his wife called at the home of Mrs. W. L. Denson, one of the complaining witnesses. She said they stated their call to be for the purpose of comforting her concerning the loss of her son. (R. 83) She obtained a blue-covered book *Children* and several little books and testified that appellant stated:

" . . . it was wrong for the President to put uniforms

on our boys and send them to fight the enemies; and they said the sooner we quit bowing down to the Flag—to the Government and her Flag, that much sooner would we have peace; that we couldn't have peace as long as we believed in saluting the flag. And he said that Hitler would rule; he said that he wouldn't come here, he wouldn't have to, but he would rule; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, 'You know you would hate to see a German mother lose her son as much as you would anyone else.' But he told me to study the literature, and that I would get comfort from it." (R. 83-84) "He said my boy was wrong, but no doubt he thought he was right, being where he was fighting the enemy, but it was wrong; that the President was wrong in putting a uniform on him and putting him in that fight down there; but he said if I would have the faith and study and believe, my boy would come back and I would have the opportunity of teaching him again, just as I would have to follow his instructions and all these things to do right." (R. 85-86) Mrs. Denson said that nothing appellant did or said caused her to have any disrespect for the government or the flag, but on the contrary she added that it caused her to have "more respect for our government" than before. R. 91.

Appellant emphatically denies having said to any of the complaining witnesses or anyone else, that Hitler would rule at anytime anywhere on earth. He never discussed the flag at anytime he says. He denies discussing that it was wrong to put the uniform on the boys and send them over. He states that at the time of the conversation he made no attempt to even discuss this subject and he denied several times making the statements attributed to him by the women. (R. 112-115, 117, 126-128) He testified that he was neither a pacifist nor a conscientious objector. R. 135.

Appellant had learned of the women's loss of their sons from his wife who had previously called at their homes. (R. 107) He began talking to Mrs. Joyner about the Kingdom of God. Explanation was made that in the history of man there were three worlds mentioned in the last chapter of 2nd Peter, the one before the flood, the present evil world and the new world to come. He said that the Scriptures indicated that we are nearing the time for the change-over from the present old world to the new world or God's Kingdom that all Christians for centuries have been praying for, "Thy kingdom come . . ." (R. 107) Then Mrs. Joyner and his wife began to converse about the loss of Mrs. Joyner's boy. Appellant said Jehovah's witnesses use the Scriptures for comfort and he began to explain about the two powers, the heavenly and the earthly. He admits saying: "I am not your boy's judge, or you either, but the Scriptures point out there is a little flock of 144,000 that will be in heaven, the earth will be made a paradise, and how the conditions of the Garden of Eden would be restored, and if Adam hadn't disobeyed the Lord they would be living here today. So, as they said, I spent about an hour and a half at one place; and I can remember is that; but those were what we spoke on, as we do in the ordained [ordinary] work talking about the kingdom." (R. 107-108) During the conversation, he mentioned Hitler in the con-

nection that Hitler "represents totalitarian rule spoken of in the 17th chapter of Revelation", which is the beast described as having 7 heads and 10 horns. (R. 108) He told the women that "this picture is symbolic picture representing totalitarianism threatening all the world today". (R. 109) During the conversation he pointed out that according to Daniel, eleventh chapter, Hitler or totalitarian rule would not win the present conflict for it is said: "he shall come to his end, and none shall help him"—thus making it clear that Hitler would not win the war. R. 109.

Substantially the same conversation took place at the home of Mrs. Denson. (R. 111-113) During that conversation Mrs. Denson interjected: "I pray every night for every mother that has lost a son". Appellant says that was where the "praying for German mothers" came in and that Mrs. Denson made the statement rather than he or his wife. R. 111.

During the conversation he pointed out that from Almighty God's standpoint there is no distinction between Baptist, Presbyterian and Catholic as the Bible teaches "one Lord, one faith, one baptism." (R. 111-112) Appellant said: "The Lord didn't recognize boundaries in establishing his kingdom or the devil didn't either in establishing his. He is out today to use Hitler to bring on a great period of destruction and establish thereon his new order.

The devil is a great mimic, and he loves to counterfeit what the Lord does, and do it first, or ahead of time; and so, the devil can read the Bible, and he knows the Kingdom is coming, and the Scriptures foretell clearly what will be the result." R. 112.

Appellant testified he refused to salute the flag. That he came to this conclusion in 1934 when he learned that the flag-salute movement in Germany was advanced by Hitler and used to regiment the people there. R. 114, 132.

Appellant admits distributing the various pieces of literature about which the women testified and every piece of literature introduced in evidence against him was admitted to have been distributed by him. R. 116<sup>1</sup>

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<sup>1</sup> The pieces of literature named in the indictment and introduced in evidence are

(1) LOYALTY

Exhibit No. 1—Witness Mrs. Bryant (R. 51)

Exhibit No. 2—Witness Mrs. Denson (R. 85)

(2) GOD AND THE STATE

Exhibit No. 2—Witness Mrs. Bryant (R. 52)

Exhibit No. 2—Witness Mrs. Joyner (R. 72)

Exhibit No. 2—Witness Mrs. Denson (R. 91)

(3) REFUGEES

Exhibit No. 1—Witness Mrs. Denson (R. 85)

Exhibit No. 3—Witness Mrs. Bryant (R. 52)

(4) END OF AXIS POWERS—COMFORT ALL THAT MOURN

Exhibit No. 1—Witness Mrs. Joyner (R. 71)

Exhibit No. 1—Witness Mrs. Denson (R. 91)

The pieces of literature not named in the indictment but which are introduced in evidence are:

(1) CHILDREN

Exhibit No. 1 on cross examination

—Witness Mrs. Bryant (R. 54)

(2) HOPE

Exhibit 2 (a)—Witness Mrs. Joyner (R. 73)

(3) ORDINATION CERTIFICATE

Exhibit No. 1—Witness Mr. Taylor (R. 105)

Exhibit A on cross examination

—Witness Mr. Taylor (R. 121)

One copy of each of the said exhibits has been previously tendered to this court. Each one of the above is printed and published by the Watchtower Bible and Tract Society, 117 Adams Street, Brooklyn, New York.

***Grounds and Decisions Sustaining Jurisdiction  
and Showing that Substantial Federal Questions  
are Involved***

**FIRST**

The courts below should have held that Section 1 of the statute is void on its face because by its terms it unduly abridges the freedom of speech and of the press, contrary to the First and Fourteenth Amendments to the United States Constitution.

***Decisions Cited***

Stromberg v. California, 283 U. S. 359

Herndon v. Lowry, 301 U. S. 242

Near v. Minnesota, 283 U. S. 697

Bridges v. California, 314 U. S. 252

Thornhill v. Alabama, 310 U. S. 88

Carlson v. California, 310 U. S. 106

Schneider v. State, 308 U. S. 147

De Jonge v. Oregon, 299 U. S. 353

Schenck v. United States, 249 U. S. 47

Fiske v. Kansas, 274 U. S. 380

State v. Klapprott, . . . N. J. . . . , 22 A. 2d 877



## SECOND

The courts below should have held that Section 1 of the statute is unconstitutional as construed and applied to the facts and circumstances of this case because appellant's rights of freedom of speech, press and worship have been abridged contrary to the first and fourteenth amendments to the United States Constitution.

### *Decisions Cited*

- Cantwell v. Connecticut 310 U. S. 296
- Schneider v. State 308 U. S. 147
- Lovell v. Griffin 306 U. S. 444
- Oney v. Oklahoma City 120 F. 2d 861
- Lynch v. Muskogee 47 F. Supp. 589
- Beeler v. Smith 40 F. Supp. 139
- Stromberg v. California 283 U. S. 359
- Herndon v. Lowry 301 U. S. 242
- Bridges v. California 314 U. S. 252
- Thornhill v. Alabama 310 U. S. 88
- Carlson v. California 310 U. S. 106
- De Jonge v. Oregon 299 U. S. 353
- Schenck v. United States 249 U. S. 47
- Fiske v. Kansas 274 U. S. 380
- Near v. Minnesota 283 U. S. 697



### THIRD

The courts below should have held that the statute is unconstitutional as construed and applied because it does not require that there be a showing of a clear, immediate and present danger that disloyalty to the government or an attitude of stubborn refusal to salute, honor or respect the flag or government or any of the other evils that statute is designed to prevent will result, but allows a conviction if the court or jury believes there is a *tendency* to cause such at any time in the future.

#### *Decisions Cited*

Schenck v. United States 249 U. S. 47

Bridges v. California 314 U. S. 252

Stromberg v. California 283 U. S. 359

Thornhill v. Alabama 310 U. S. 88

De Jonge v. Oregon 299 U. S. 353

Whitney v. California 274 U. S. 357, 363-369

Herndon v. Lowry 301 U. S. 697

## FOURTH

There is no evidence whatever that any of the evils prohibited by the statute, to wit, disloyalty to the government or attitude of stubborn refusal to salute the flag or advocacy of the cause of the enemies will result from the words spoken by appellant or the literature distributed by him.

### *Decisions Cited*

Herndon v. Lowry 301 U. S. 697  
 McKee et al v. Indiana 37 N. E. 2d 940, — Ind. —  
 People v. Northum 41 C. A. 2d 284, 103 Cal. Supp. 295  
 Butash v. State 212 Ind. 492, — N. E. 2d —  
 Fiske v. Kansas 274 U. S. 380  
 Beeler v. Smith 40 F. Supp. 139  
 State v. Sentner — Iowa —, 298 N. W. 813  
 State v. Aspelin — Oreg. —, 203 P. 964

## FIFTH

The convictions cannot be based upon isolated statements, oral or written, but the court must examine the entire conversations and the contents of the literature from which such statements are taken to determine the intent and meaning of the language objected to.

### *Decisions Cited*

Schaefer v. United States 251 U. S. 466, 482  
 United States v. One Book Ulysses 72 F. 2d 705  
 United States v. Dennett 39 F. 2d 564  
 Halsey v. New York Society 234 N. Y. 1, 4.  
 Klaw v. New York Press Co. 137 A. D. 466, 688  
 Daniel v. Moncure 58 Mont. 193, 200

## SIXTH

**The general verdict will not support a conviction where the undisputed evidence shows that either ground of conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.**

### *Decisions Cited*

Stromberg v. California 283 U. S. 359, 363-366  
Williams v. State of North Carolina 63 S. Ct. 207, 210  
Thornhill v. Alabama 310 U. S. 88

## SEVENTH

**On its face and as construed and applied the statute is unconstitutional because it is vague, indefinite, uncertain, too general, fails to furnish ascertainable standard of guilt, enables speculation and amounts to a dragnet thereby permitting the denial of liberty contrary to section 1 of the Fourteenth Amendment to the United States Constitution.**

### *Decisions Cited*

Thornhill v. Alabama 310 U. S. 88, 97-98  
Lanzetta v. State 306 U. S. 451  
Herndon v. Lowry 301 U. S. 242  
Connolly v. General Const. Co. 269 U. S. 391, 392  
United States v. Cohen Grocery Co. 255 U. S. 81  
International Harvester Co. v. Kentucky 234 U. S. 216  
Standard v. Waugh Chemical 231 N. Y. 51

## **EIGHTH**

**The existence of state of war in which the nation is engaged does not limit, suspend or shorten the Bill of Rights or the Fourteenth Amendment but does permit broadening of legislative powers which must find support in direct and specific needs of the fields to which extended and the terms of the statute do not directly pertain to any such needs.**

### ***Decisions Cited***

Laski, *Liberty in the Modern State*

pp. 56-57, 115, 123, 124-125

Wilson v. Russell 1 So. 2d 569, 146 Fla. 539

Ex parte Milligan 4 Wall. 2, 18 L. Ed. 281, 295

Milk Wagon Drivers Union v. Meadowmoor Dairies  
312 U. S. 287, 320

United States v. Carolene Products

304 U. S. 144, 152-153

### **Discussion of Statute in Question and of Federal Questions Presented on this Appeal**

Because of the outrageous travesty committed against the Bill of Rights in Mississippi in charging and convicting appellant, a faithful follower of Christ, Jesus, with the same crime for which the Master gave His life any honest person is compelled to make many complaints and indulge in long discussion. The dissenting Justices of the Mississippi Supreme Court took occasion to write much in protest of the tyranny enforced against appellant. To save the time of this court appellant hereby incorporates and makes a part of this discussion the dissenting opinions by Chief Justice Smith and Judge Alexander in the case

at bar [*Taylor v. Mississippi*] Appendix A, and in the case of *Cummings v. Mississippi* [companion case docketed following this case] (See appendix to Jurisdictional Statement in *Cummings* case and Record pp. 130-144), and in the case of *Benoit v. Mississippi* [also companion case docketed herewith]. (See Jurisdictional Statement in the *Benoit* case and Record pp. 119-125.)

The discussion contained in these dissenting opinions eloquently argues the cause of appellant, showing the fallacy, error, and danger against institutions of life and liberty that prevail in the statute and in the controlling opinion of the court below. We adopt the entire text of the dissenting opinions and make them a part of this discussion.

The statute does not make clear and present danger flowing from the words spoken or written a prerequisite. The court said: "The Mississippi statute does not do that [i. e., require proof of clear and present danger]." [bracketed words added] (R. 159; Appendix p. 51, *infra*, this document) It is all comprehensive and prohibits any preaching, teaching, or disseminating of any creed, theory, principles, or teachings by word of mouth, printed matter or by phonograph which is calculated or which would tend to encourage disloyalty "to the government of the United States, or the state of Mississippi", "advocates the cause of the enemies" or "which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States". The Mississippi statute is not of the same character as the statutes sustained in the cases of *Gitlow v. New York*, 268 U. S. 652, and *Whitney v. California*, 274 U. S. 357. These statutes denounced specific criminal acts and participation in conspiracies to commit such acts. In the provisions of the Mississippi statute relied upon to sustain the conviction there is no such requirement. No specific doctrine is explicitly condemned which advocates the cause

of the enemies or encourages disloyalty. It is true that the statute prohibits language which would create an attitude of stubborn refusal to salute the flag but this is not sufficient.

The refusal to salute the flag *per se* is not unlawful, unpatriotic, nor is it a crime. It is not condemned by statute. What is punished is speech and writings which constitute opinion. In the *Gitlow* and *Whitney* cases, *supra*, the decisions rest upon the presumption of constitutionality. This presumption, if any exists in this case, is rebutted by showing that the facts are otherwise. (*Borden Co. v. Baldwin*, 293 U. S. 149, 209)

The statute here is void because it does not deal with any abuse of speech but attempts to prohibit certain type of speech or press activity on the theory that no abuses can or will result. This theory is not sufficient to sustain the statute and it is void on its face. *De Jonge v. Oregon*, 299 U. S. 353; *Thornhill v. Alabama*, 310 U. S. 88; *Stromberg v. California*, 283 U. S. 359; *Herndon v. Lowry*, 301 U. S. 242. The statute thus chokes free discussion and circulation of opinion.

The statute is void on its face and as construed and applied because it does not make *clear and present danger* a requirement for conviction. *Bridges v. California*, 314 U. S. 252; *Schenck v. United States*, 249 U. S. 47, 52.

The statute uses the terms "designed and calculated", "advocates", "which would incite" and "which reasonably tends", all of which terms are from Eighteenth Century doctrines applied under old common law in the days of oppression, license, censorship, taxation and prohibition. These ancient terms allowing conviction on such grounds are wholly at variance with present-day principles of freedom under the Bill of Rights which allows the greatest liberality and confines punishable abuses to those only where there is clear, immediate and present danger that the evils prohibited will result.

This *reasonable tendency* doctrine permits the state to go out of its proper field, and allow condemnation upon the supposition of ill-tendency.

The "clear and present danger" doctrine permits dogma, creed, theory, principle, teachings and doctrines to be *proved* or *disproved* by argument in the course of events. It avoids the risk of suppressing disagreeable truth so long as there is no imminent danger of the unlawful acts. Only applying and maintaining this principle can the nation survive as a democracy with freedom for all.

The court says that if clear and present danger is required then the proof sustains it, and in support of this statement says: "The utterances, oral and written together . . . reasonably tend to create an attitude of stubborn refusal to salute the flag." (R. 159) Then the court says that the listeners and readers testified they were not affected, and that the conduct had no result upon them but caused them to resent appellant. (R. 159) Then the court says: "But in later days, when adversities of war may become more acute, who can say what their reactions may be? . . . This is fruit to be produced after gradual growth and maturity from the evil seeds which have been sown." R. 159-160.

There is no showing that anyone read the literature complained of, and the undisputed evidence is that the oral statements did not affect anyone as they were not believed true. There is no evidence that such statements were made at other places or to other persons. Therefore the evidence wholly fails to show any clear and present danger.

The above statements of the court below bring this case squarely within the condemnation made in *Herndon v. Lowry*, *supra*, where this Court said:

"The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change of government if a jury can be



persuaded that he ought to have foreseen that his words would have some effect in the future conduct of others." No reasonably ascertainable standard of guilt is prescribed. . . . the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment."

See *Thornhill v. Alabama*, 310 U. S. 88, 97-98; *Lanzetta v. State*, 306 U. S. 451; *State v. Klapprott et al.*, 127 N. J. L. 395, 22 A. 2d 877, which latter case involved a New Jersey statute very similar to this statute. The Supreme Court of New Jersey declared the statute to be void because abridging freedom of speech, in addition to vagueness.

The motives and surrounding circumstances of the testimony of the women complainants should be considered. While it is true that all disputed issues of fact are settled by the jury and their judgment is final, yet *this court must not ignore the facts which show a frame-up, entrapment*, especially in view of the *denial by appellant* of saying the words attributed to him. They did not obtain the books with intention of reading, but for sole purpose of prosecuting. The parts of the conversations about which the women are silent are explained and the whole thing becomes plain when appellant's testimony is considered.

Appellant's statements to his hearers were made on the basis of the Scripture or an expression of his opinion as to what the Holy Word of God said concerning present-day events. His statements were not made with the intention of perverting the war effort or the national defense, but *solely to persuade the women of the importance of studying the Bible*. It is not contended or shown that any member of the armed forces heard the statements or that same were conveyed to prospective members of the forces or men subject to the draft. Appellant denies making the statement about the flag and the wrong of sending an army overseas.

While there was little, if any, "second front" agitation



at the time of the statements it is a thing of common knowledge that for months before the second front was opened in Africa there was a constant battle of words in the public press, in news items, statements of public officials, swivel-chair "newspaper typewriter" generals, editors and others as to advisability of opening a second front and whether or not it was or was not a sound move. Many conflicting opinions were expressed. Many critical opinions of the *second front* were voiced. The nation is at war, says the controlling opinion below! But does this mean that in times of war the conduct of the commander in chief, the generals, and other officials becomes immune from criticism and comment, except favorable comment, as it is today in Germany, Italy and such places? By declaring war on the Axis powers the United States did not surrender the "four freedoms" which it claims to be fighting to preserve. It has historically been the prerogative of the American people to criticize and advocate peaceably for a change in policies, even in times of war. If this right did not exist and could not be practiced, the smoldering discontent would explode into violence and revolution. Any well-balanced and well-informed person knows that public discussion of policies is a public necessity. That free speech is not exercised for the sole benefit of the speaker but that the public have an equal right to hear, which is also protected by the Constitution. Throughout history the American people have felt perfectly free to criticize their leaders whenever, and to whatever extent, they have felt they had just ground for finding and pointing out faults, *in the public interest*. This right and practice has not kept them from giving loyal and sacrificial service to the republic. There were grumblers among the most devoted of General Washington's followers, but they followed him none the less faithfully on that account. As it was then, so also it is now.

There is a difference in making a statement which

directly impedes the war effort of the nation and a statement of opinion which is related to national policy, politics or religion. The conviction is void because abridging freedom of speech and of press on the basis of the above cases.

The Bill of Rights is not a peace-time document, as the court below declares, but the rights protected by it exist in war time as in peace time. The 1918 Report of the Attorney General of the United States states that during war "the right of discussion of governmental policy and the right of political agitation are most fundamental rights in a democracy." *Ex parte Milligan*, 4 Wall. 2.

As further part of this discussion and as correct statements of the law, we incorporate the classic dissents of Justices Holmes and Brandeis in the cases of *Abrams v. United States*, 250 U. S. 616, 630; *Schafer v. United States*, 251 U. S. 493-495; *Pierce v. United States*, 252 U. S. 239, 269, 273; *Gilbert v. Minnesota*, 254 U. S. 325, 336-338; *Whitney v. California*, 274 U. S. 357, 375-378—in addition to the cases heretofore cited.

There is no contention that appellant told others that it was wrong for them to salute the flag. The literature made basis of the indictment plainly says that those other than Jehovah's witnesses can salute when not in a covenant to obey God's laws. All that the booklets consist of in this respect, therefore, is explanation as to why Jehovah's witnesses cannot salute the flag. It is *necessary* to make such explanation in view of the misrepresentation and violence against Jehovah's witnesses because of their refusal to salute. The statute is admittedly unconstitutional as construed by the court below. The statute provides: "Except as to cases then pending in court this act shall expire after the duration of the present war" (Sec. 5), and "punished by imprisonment in the state penitentiary until treaty of peace be declared." (Sec. 1) The controlling opinion below described it as a war measure. The controlling

opinion says: "Even so, if this were peace-time legislation, the writer would not hesitate to hold it unconstitutional as to appellant." Pages 3, 4, *supra*.

The injurious effects of enforcement of state war laws contrary to policy of the Department of Justice are plain. To permit the state to enforce legislation of this sort contrary to such policy in effect checkerboards the nation by a variety of state policies which seriously impedes unity and harmony. What might be considered an offense against the federal government would not be treated or considered as such in another. There results confusion in the national war effort on which there should be uniformity of policy. Freedom of speech for the popular and unpopular should be the same in every state, otherwise such broad national rights of freedom cannot be enforced for the unpopular or the non-resident with the same fairness as is accorded persons having connection with local interests, who enjoy popular control of legislative and executive agencies. Unless the Supreme Court stabilizes the policies by fixing limitations in these fields the unpopular or outsiders who are adversely affected will either have no recourse or will be led to interstate reprisals. In either even there is an inevitable tendency toward disunity—a tendency which was one of the main reasons for the adoption of the First and Fourteenth Amendments. The whole nation is affected, and the matter of maintaining national unity on such subjects is increasingly important.

## Conclusion

For the sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial questions were presented before the Supreme Court of Mississippi.

The appellee, State of Mississippi, acting through its counsel of record, has stipulated with appellant to waive the filing of any papers in opposition to the jurisdiction of this court, and reserve the right to urge that no "substantial federal question" be presented in brief and upon oral argument. A copy of such stipulation is attached hereto and marked Appendix B. See page 74.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the judicial procedure as to call for this Court's power of supervision to halt the same.

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**APPENDIX A****Opinion****IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC**

No. 35143

(Opinion rendered January 25, 1943)

**R. E. TAYLOR v. STATE OF MISSISSIPPI  
ROBERDS, J.**

The Legislature of Mississippi at its 1942 regular session enacted Chapter 178, General Laws of Mississippi 1942, which the Reporter will set out in full.

Appellant was indicted, tried, convicted and sentenced for violation of Section 1 of that Act. He appeals.

He first contends that the evidence is not sufficient to support his conviction.

Summarized the evidence is that appellant and his wife, the latter part of May and the first of June 1942, appeared at the homes of a Mrs. Joyner and Mrs. Denson in Madison County, Mississippi, and then and there, according to the testimony of Mrs. Joyner, said to those present:

"Well, he came in and said he wanted to talk with me; and they came in and sat down and he began to talk, and looked through the Bible; he didn't read any in the Bible, but just turned through it, and talked; and told me that the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to salute the Flag; that we just worshiped our Government and our Flag, and looked on it as something sacred; and that it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there."

A Mrs. Bryant, who was present, testified:

"Well, he said it was wrong for our President to send these boys across in uniform to fight our enemies: said it was wrong to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come down here to rule; and he said the quicker the people here quit bowing down and worshipping and saluting our Flag and Government, the sooner we would have peace."

Mrs. Denson gave the same version in substance of what was said at her home, except she added:

"He said there were just as many sheep—he divided the people as sheep and goats, the Jehovah's witnesses were the sheep and the believers; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, 'You know you would hate to see a German mother lose her son as much as you would anyone else.' But he told me to study the literature, and that I would get comfort from it." He had theretofore appeared at the home of Mrs. Bryant and sold her some literature.

Mrs. Joyner and Mrs. Denson had each lost a son in the attack upon Pearl Harbor. He also said their sons would come back and live with them forever. Appellant says it was his intention to comfort them. They were strangers to appellant and the record does not disclose how he knew their sons had been killed.

Appellant admitted making some of the statements and flatly denied making others. He alone testified in his own behalf as to whether the statements were or were not made. His wife, who was present when it is claimed the statements were made, was not present at the trial and did not testify. It was the province of the jury, not ours, to say who was testifying truthfully—these three ladies or appellant.

The proof furthermore is that each of these three ladies

purchased from appellant certain written literature, consisting of twenty-two books and pamphlets, for thirty-five cents. A number of these books and pamphlets were introduced in evidence. Certain excerpts from this literature were selected and introduced by the State. Four of such excerpts were:

"All nations of the earth today are under the influence and control of the demons. . . . All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government of kingdom of Almighty God. . . . and all are under the control of the invisible host of demons, . . ."

"But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment."

"Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world."

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment. . . ."



Other passages in this literature teach that "the so-called democracies" hold out no hope of peace, security, life or happiness—that the only place of safety is in Theocracy; that if there is a conflict between state law and what Jehovah's witnesses conceive to be Jehovah's law, the state law should not be obeyed; that Jehovah's witnesses take a pledge not to salute the flag and that to undertake by law to force a child to salute the flag is to "frame mischief by law." Appellant justified his attitude and conduct by quoting on the stand certain passages of the Scriptures and calling attention to other passages therefrom appearing in the literature.

In addition to the foregoing, appellant himself testified that he was an ordained minister. His earthly ordination was evidenced by a printed postcard containing the printed signature of the Watchtower Bible and Tract Society and its president, and which card has a blank space for the name of the person to be ordained and a blank for the identifying signature of such person. Both of these blanks had been filled in by appellant. Appellant also evidenced his ordination as a minister by referring to certain Scriptural passages. He said he had been a full time Jehovah's Witness for twelve years; that he came to Mississippi from Alabama and had been here some three months; that he had contacted many of the other citizens, white and colored, of Madison County and had sold to them many sets of the literature; that his financial income from this work consisted of the excess of the sale over the cash prices of the literature and as much as \$25 per month paid him by said Society, "upon our getting in so much time. If we don't work we don't eat"; that there were one hundred and forty-four thousand such workers in the United States; that the workers were under a superintendent; that he was not a pacifist and he loves his country; that he was in the Army in the last World War on duty in Honolulu, and after having served about eighteen



months he purchased his release therefrom by paying "the government \$140."

Placing these words and acts against the statute, it will be seen that they may be reasonably construed to violate it in these respects: (1) that they are calculated to encourage disloyalty to the Governments of the United States and of Mississippi, and discourage enlistment in the armed forces of the Nation: (2) that they advocate the cause of the enemies of the United States; and (3) that they reasonably tend to create an attitude of stubborn refusal to salute, honor, or respect the flag or government of the United States. Assuming the validity of the law, we think the evidence is sufficient to support the verdict of the jury.

Appellant contends that this statute is unconstitutional as to him because it deprives him of the right of free speech and free press guaranteed by the Constitutions of Mississippi and the United States. The act, as an entirety, is sufficiently comprehensive in its objects, including, for instance, sabotage and acts of violence against the sovereign, to meet this constitutional attack, but the question is whether it is constitutional as applied to appellant and his conduct. The question should be tested by the powers of the sovereign in war-time and the corresponding rights and duties of the people during such time. Even in peace-time the right of free speech does not mean unbridled license of speech. The right may be abused, for which abuse punishment may be meted out under the police power of the State. The Constitution protects the right but not the abuse. For instance, one has no right even in times of peace to use language, oral or written, which wrongfully injures another in person or property, or tends to corrupt public morals, induce crime, endanger the public safety, or which advocates a change in industrial conditions or the form of government by use of force, violence or other unlawful means. *State v. Quinlan*, 86 N. J. L. 120, 91 Atl. 111; *State v. Boyd*, 86 N. J. L. 75, 91 Atl. 586, affirmed 87 N. J. L. 328,

95 Atl. 599; *State v. Fox*, 71 Wash. 185, 127 Pac. 111, affirmed in 236 U. S. 273, 59 L. Ed. 573; *People v. Most*, 171 N. Y. 423, 58 L. R. A. 509, 64 N. E. 175; *State v. Gibson*, (Iowa) 174 N. W. 34; *State v. Tachin*, 92 N. J. L. 269, 106 Atl. 145; affirmed 108 Atl. 318; *State v. Gabriel*, 95 N. J. L. 337, 112 Atl. 611; *People v. Gitlow*, 195 App. Div. 773, 185 N. Y. Supp. 783; *Re Moriarity*, 44 Nev. 164, 191 Pac. 360; *Re McDermott*, 180 Cal. 783, 183 Pac. 437; *People v. Malley* (Cal.) 194 Pac. 48; *People v. Steelik*, (Cal.) 203 Pac. 78; *State v. Worker's Socialist Pub. Co.*, (Minn.) 185 N. W. 931; *Whitney v. California*, 273 U. S. 357, 71 L. Ed. 1095 (affirming 57 Cal. App. 449, 207 Pac. 693); *People v. Wagner*, 65 Cal. App. 704, 225 Pac. 464; *People v. Cox*, (Cal.), 226 Pac. 14; *Burns v. U. S.*, 274 U. S. 328, 71 L. Ed. 1077, 47 S. Ct. 650; *Re Denton* (Kan.), 195 Pac. 981; *People v. Ruthenberg*, (Mich.) 201 N. W. 358, (writ of error dismissed in 273 U. S. 782, 71 L. Ed. 890, 47 S. Ct. 470); *Berg v. State* (Okla.), 233 Pac. 497; *Com. v. Widovich*, (Pa.) 145 Atl. 295, (affirming 93 Pa. Super. Ct. 323, appeal dismissed and cert. denied, 280 U. S. 518, 74 L. Ed. 588, 50 S. Ct. 66.) Even so, if this were peace-time legislation, the writer would not hesitate to hold it unconstitutional as to appellant.

But this one of several statutes passed by the Mississippi Legislature in 1942 to aid in the prosecution of the present war and to meet conditions arising out of the war. The reasons for its enactment are summarized in the preamble. It is an emergency, temporary war act, and by its express terms it will expire upon termination of the war. "When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right." *Schenck v. U. S.*, 249 U. S. 47, 63 L. Ed. 470, 39 Sup. Ct. Rep. 247. Again, "To the end that war may not result in defeat, freedom of speech may, by act of Congress, be curtailed or denied so that the morale of the people and the

spirit of the army may not be broken by seditious utterances; freedom of the press curtailed to preserve our military plans and movements from the knowledge of the enemy; deserters and spies put to death without indictment or trial by jury, ships and supplies requisitioned; property of alien enemies, theretofore under the protection of the Constitution, seized without process and converted to the public use without compensation and without due process of law in the ordinary sense of that term; prices of food and other necessities of life fixed or regulated, railways taken over and operated by the government; and other drastic powers, wholly inadmissible in time of peace, exercised to meet the emergencies of war." *United States v. Macintosh*, 283 U. S. 605, 75 L. Ed. 1302.

The Espionage Act enacted by Congress in 1917 (40 Stat. at L. 219, Chap. 30) and the amendment thereto in 1918 (40 Stat. at L. 553, Chap. 75, Comp. Stat. Sec. 10, 212c, Fed. Stat. Anno. Supp. 1918, p. 120) provide, *inter alia*, that whoever, when the United States is at war, shall "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of Government of the United States;" or its Constitution, military or naval forces, flag, or uniform, or any language intended to bring the form of the Government of the United States, or the Constitution, military or naval forces, flag, or uniform into contempt, or disrepute; or "wilfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies;" or whoever shall wilfully advocate, teach, defend, or suggest the doing of any of the acts or things enumerated in the statute; or "whoever shall by word or act support or favor the cause of any country with which the United States is at war, or by word or act oppose the cause of the United States therein," shall be punished by fine of not more than ten thousand dollars or imprisonment for not more than twenty years, or both. The words

of this act are strikingly similar to the state act now under consideration. The Espionage Act, without exception, has been held constitutional as an emergency war act. *Frohwerk v. United States*, 249 U. S. 204, 63 L. Ed. 561; *Debs v. United States*, 249 U. S. 47, 63 L. Ed. 470; *Abrams v. United States*, 250 U. S. 616, 63 L. Ed. 1173; *United States ex rel Milwaukee S. D. Pub. Co. v. Burleson*, 255 U. S. 407, 65 L. Ed. 704; *Dodge v. United States*, 7 A. L. R. 1510, 258 Fed. 300, petition for writ of certiorari denied 250 U. S. 660, 63 L. Ed. 1194; *Equi v. United States*, 261 Fed. 53, petition for writ of certiorari denied, 251 U. S. 560, 64 L. Ed. 414; *Wimmer v. United States*, 264 Fed. 11, petition for certiorari denied, 253 U. S. 494, 64 L. Ed. 1030; *Dierkes v. United States*, 274 Fed. 75; *Seebach v. United States*, 262 Fed. 885. In the *Schenck* case, *supra*, the Court in drawing the distinction between peace-time and war-time legislation said "We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. . . ." In the *Dodge* case, *supra*, the Court held that the Constitutional guarantee of freedom of speech does not extend to the protection of utterances in time of war which involve the integrity of the nation or injure or tend to injure it.

A number of the states have passed sedition acts, some during the last World War and some in peace-time, having for their general object the curtailment of speech and action tending to create hostility to or the undermining of state and national governments. Some of these have been held unconstitutional as denying freedom of speech, or on other grounds; others have been held constitutional.

The Connecticut Statute (Chap. 312, Laws 1919), penalized disloyal or abusive matter concerning the form of government of the United States, its military forces, flag, or uniform, or any matter which was intended to bring them into contempt. This was held not to violate the right of free speech and was a subject within the police power of

the state. *State v. Sinchuck*, (Conn.) 115 Atl. 33, 20 A. L. R. 1515.

The Iowa Statute (Acts 37th Gen. Assem. c. 372) provides (1) that if any person shall incite insurrection or sedition etc. or shall attempt, by word or writing or other means, to do that; or (2) shall, by speech or writing or other means, advocate the subversion or destruction by force the government of the state or the United States; or (3) who shall by any method incite, abet or encourage hostility or opposition to either government, he is guilty of a crime. This did not abridge the right of freedom of speech. *State v. Gibson*. (Iowa) 174 N. W. 34.

The Montana Statute declared that when ever the United States is at war any person who shall utter, print, write, or publish any language calculated to incite or influence resistance to any duly constituted Federal or state authority in connection with the prosecution of the war, shall be guilty of a criminal offense. The act has been held constitutional in a number of state decisions. *State v. Kahn*, 182 Pac. 107; *State v. Wyman*, 186 Pac. 1; *State v. Smith*, 190 Pac. 107; *State v. Fowler*, 196 Pac. 992, rehearing denied 197 Pac. 847; *State v. Schaffer*, 197 Pac. 986, and in *Ex parte Starr*, 263 Fed. 145.

The New Jersey Court upheld the section of the law which made it a penal offense to advocate the subversion of the government by force, but denied validity to the provision making it such an offense to belong to an organization or attend meetings having for their purpose encouraging hostility or opposition to the state or national government, because the wording of the latter section covered the use of lawful as well as unlawful means. *State v. Tachin*, 106 Atl. 145, affirmed 108 Atl. 318. This appears to have been a peace-time statute and is in accord with the holdings generally under such statutes, as shown above.

Likewise the New York Statute, involving attempt to overthrow the government by force or violence, or other

unlawful means, and the advocacy thereof by word or writing was upheld in *Gitlow v. New York*, 268 U. S. 652, 69 L. Ed. 1138, (affirming 234 N. Y. 132, 539, 136 N. E. 317, 138 N. E. 438;) and *People v. American Socialist Society*, 202 App. Div. 640, 195 N. Y. Supp. 801. This was peace-time legislation (Laws 1909, Chap. 88, originally enacted in 1920).

But the prohibition of the use of disloyal language per se, in a Texas statute, as a war measure, was held to be a subject exclusively of Federal legislation, and not within the scope of state legislation, and was not within the police power of the state and violated the right of free speech, on the ground that the statute was so worded as to penalize one who uttered language of such nature, whether it was used under such circumstances as to make it reasonably provocative of a breach of the peace or not. *Ex parte Meckel*, 220 S. W. 81; *Schellenger v. State*, 222 S. W. 246.

Also, the Illinois Statute limited the means to force or violence and was upheld as peace-time legislation. *People v. Lloyd*, 304 Ill. 23, 136 N. E. 505; and likewise an act of the State of Pennsylvania, requiring force or violence and intent, *Com. v. Widovich*, 295 Pa. 311, 145 Atl. 295 (affirming 93 Pa. Sup. Ct. 323, appeal dismissed and cert. denied, 280 U. S. 518, 74 L. Ed. 588).

We now turn to authorities more directly in point on the question under consideration.

Chapter 463, Laws of Minnesota, approved April 20, 1917, a war act, in the first section thereof, made it an offense to advocate, or attempt to advocate, by word or writing, that men should not enlist in the military or naval forces of the United States, and the second section thereof provided: "It shall be unlawful for any person to teach or advocate by any written or printed matter whatever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States." Holm was charged with circulating a pamphlet containing statements



"this war was arbitrarily declared against the will of the people"; that the people are ten to one against it; that "the President and Congress have forced the war upon the United States," and are attempting by conscription to "force us to fight a war to which we are opposed;" that "this war was declared to protect the investments of Wall Street in the bonds of the allies." Holm said he was exercising his right of free speech. The Court said that he had abused the right—" . . . the freedom secured thereby is not an unlimited license to speak and publish whatever one may choose. It is settled that the state may prohibit publications or teachings which are injurious to society, or which tend to subvert or imperil the government or to impede or hinder it in the performance of its public and governmental duties without infringing the constitutional provisions which preserve freedom of speech and of the press;" that the right does "not grant immunity to those who abuse this privilege, nor prevent the state from making it a penal offense to publish or advocate matters or measures inimical to the public welfare." *State v. Holm*, (Minn.) 166 N. W. 181, L. R. A. 1918C 304.

In *State v. Gibson*, (Iowa) 174 N. W. 34, the indictment charged that defendant, "did attempt by speech, action, and manner of speaking to incite, abet, promote and encourage hostility and opposition to the government of the State of Iowa and of the United States," contrary to the sedition act of Iowa. The statute is summarized above herein. The Court held right of free speech was abused, saying the framers of the Constitution "did not intend to protect what might destroy the state."

In *State v. Kahn*, *supra*, Kahn used this language "this is a rich man's war, and we have no business in it. They talk about Hooverism—it is a joke. Nobody pays any attention to it. It don't amount to anything. The *Lusitania* was warned not to sail. They were carrying munitions and wheat over for the allies. The poor man has no show in this

war. The soldiers are fighting the battles of the rich."

The Court said "In time of peace the language employed by this defendant, or language of similar import, might not constitute a crime, and it may be true that it is beyond the power of the Legislature to make its use a crime in the time of peace; . . . as said by the Supreme Court of the United State: 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right'", citing the Schenck, Frohwerk and Debs cases, *supra*.

In the Gilbert case, *supra*, the State of Minnesota had a statute making it unlawful to advocate that men should not enlist in the armed services of the United States and also "for any person to teach or advocate by any written or printed matter whatsoever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting and carrying on war with the public enemies of the United States." Gilbert said "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy? I tell you what is the matter with it: Have you had anything to say as to who should be President? Have you had anything to say as to who should be governor of this state? Have you had anything to say as to whether we would go into this war? You know you have not. If this is such a good democracy, for Heaven's sake why should we not vote on conscription of men? We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty eight hours." In overruling the contention that Gilbert was properly exercising his right of freedom of speech, the Supreme Court of the United States, speaking through Mr. Justice



McKenna, said "it (the right) is not absolute—it is subject to restriction and limitation. And this we have decided in *Schenck v. United States* (supra). We distinguished times and occasions, and said that 'the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic'; also that in the *Frohwerk* case, supra, that the Court said "the 1st Amendment, while prohibiting legislation against free speech as such, cannot and obviously was not intended to give immunity to every possible use of language," citing also the *Debs* and *Abrams* cases, supra, and *Schaefer v. United States*, 251 U. S. 466, 64 L. Ed. 360, where it was said, that the curious spectacle was presented of the Constitution of the United States being invoked to justify the activities of the enemies of the United States. The conviction was sustained because we were then, as now, at war with Germany.

So far, we have not dealt with the question of the flag. We do that now.

In *Ex parte Starr*, 263 Fed. 145, a state statute making it an offense to utter or publish slurring language about the flag was held valid.

In *Com. v. Karvonep* (Mass.), L. R. A. 1915B, 706, 106 N. E. 556, Ann. Cas. 1916D, 846, the Court upheld a statute making it unlawful to carry in a parade a red or black flag or banner having upon it an inscription opposed to organized government, which is sacrilegious, or derogatory to public morals.

In *People v. Burman*, (Mich.) 25 L. R. A., (Ns.) 251, 117 N. W. 589, the Court upheld a municipal ordinance prohibiting the display of a red flag in a procession where it is likely to disturb the public peace.

On the other hand, a California court held invalid a municipal ordinance which made it unlawful to display, or to have in possession, a flag of any society or association which espoused principles or theories antagonistic to the United States or its Constitution, because this included an

effort to change the form of government by peaceful means. *Re Hartman*, 188 Pac. 548.

In *People v. Lloyd*, (Ill.) 136 N. E. 505, the court upheld a statute prohibiting, inter alia, the display of a flag at a public meeting, or in a parade, intending thereby to overthrow the government by force or violence.

In *State v. Sinchuk*, (Conn.) 115 Atl. 33, 20 A. L. R. 1515, a statute was held valid which provided, among other things, that it was an offense to publish matter abusive or disloyal of the form of government or the flag.

The Supreme Court of the United States, in *Stromberg v. California*, 283 U. S. 359, 75 L. Ed. 1117, held invalid a statute which made it an offense to display a flag at a public assembly "as a sign, symbol or emblem of opposition to organized government, or as an invitation or stimulus to anarchistic action, or as an aid to propaganda that is of a seditious character," because it might be construed to include an orderly opposition to government by legal means and within constitutional limitations.

In *Minersville School District v. Gobitis*, 310 U. S. 586, 84 L. Ed. 1375, the Supreme Court of the United States upheld a school regulation requiring all pupils to salute the American flag as a part of the daily school exercises, and providing that refusal to salute the flag should be regarded as an act of insubordination and dealt with accordingly.

Similar state statutes, or school regulations, were upheld in *People ex rel v. Sandstrom*, 279 N. Y. 523, 18 N. E. 2d 840, 120 A. L. R. 646; *Leoles v. Landers*, 302 U. S. 656, 82 L. Ed. 507 (dismissing appeal from 184 Ga. 580, 192 S. E. 218); *Hering v. State Bd. Ed.*, 302 U. S. 624, 82 L. Ed. 1087, (dismissing appeal from 118 N. J. L. 566, 194 Atl. 117) *Gabrielli v. Knickerbocker*, (Cal.) 82 Pac. 2d 391; and *Nichols v. Lynn*, (Mass.), 7 N.E. 2d 577, 110 A.L.R. 377. The District Court of the United States, Southern District of West Virginia, in the case of *Walter Barnette et al. v. West Virginia State Board of Education et al.*, not yet reported as this

opinion is being written, speaking through Judge Parker, has aligned that court with the cases holding invalid rules of school boards requiring school children to salute the flag. The last six cases involve children of Jehovah's witnesses. These cases are persuasive, not decisive, on this question, because, with the exception of the Starr case, they involve permanent, peace-time rules and statutes commanding affirmative action defendants, whereas the Mississippi Statute is temporary, emergency war-time legislation to restrain affirmative teaching and action operating upon and to the detriment of others, and to the injury of the general public.

The importance and far-reaching import of the attitude of appellant towards the flag, as disclosed by the evidence herein, are shown by the statements of Mr. Justice Harlan in *Halter v. Nebraska*, 205 U. S. 34, 51 L. Ed. 696: . . . a state will be wanting in care for the well-being of its people if it ignores the fact that they regard the flag as a symbol of their country's power and prestige, and will be impatient if any open disrespect is shown towards it . . . that to every true American the flag is the symbol of the nation's power—the emblem of freedom in its truest, best sense. It is not extravagant to say that to all lovers of the country it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression."

Our nation is now in a war of self-defense for self-preservation. Freedom of speech is not the only, nor the most important, constitutional right of the citizens of this country. The constitution provides that no law shall be passed impairing the obligation of contract; yet under the moratorium laws and Soldiers' Civil Relief Act no security contract can be enforced against one in the military service; and lease and rental contracts between civilians in war

areas are subject to approval and change by national administration officials regardless of the assent of lessors. The Constitution provides that the courts shall be open to all persons, yet under that act no legal proceeding can be prosecuted to completion, except under unheard of peace-time restriction and limitations. Under the war power acts and Inflation Emergency Price Control Acts, the entire financial and living fabric of the Nation is being woven to best aid in the prosecution of the war, regardless of individual rights. The Constitution provides that life and liberty shall not be taken without due process of law, yet under the Selective Training and Service Act the people are inducted into the military service, willingly or unwillingly, and we judicially know that the lives of many of them are being given for their country on the sands of Africa and in the jungles of New Guinea and in other foreign countries. A nation must have inherently the power to save itself. If all individual constitutional rights were maintained, the Nation could not defend itself. The rights of the citizens must give way temporarily as this may be reasonably necessary for the Nation's self-preservation.

The act has two objects: aid in prosecuting the war and dealing with local conditions arising out of the war. This is a war of all people—not those in the military service alone. The spirit and morale of the people; their willingness to help financially by personal effort; their support of, belief in, and respect for the government are essential to its successful prosecution. The legislature knew the local conditions—that we have two races about equal in numbers in this state, and that under the stress of the times agitation and subversive influence should not be abroad among the people. The Legislature is the judge of conditions justifying such legislation unless it is clearly apparent to the Court that the assumption is unfounded. *State v. Sinchuk*, *supra*. This is not the usual political discussion, with a view, by commendation or criticism, to aid or better the govern-

ment and its administration. "Words are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of government in a democratic state." *Masses Pub. Co. v. Patten*. (D. C. S. D. N. Y.) 244 Fed. 535. Appellant and his co-workers are going about the country and into the homes of the people, of low and high degrees of intelligence, and all races, advocating disobedience to all laws and disrespect for and disloyalty to all governments, if perchance the particular law or the nature of the government in his opinion is not in accord with Theocracy. And this at a time when the nation is straining every nerve, muscle and sinew, and mobilizing every resource and person, to defend itself against a treacherous attack of one and the evil designs of all of its enemies. We draw a sharp line between war and peace time powers, and hold that under the conditions the Legislature had the right, under its police powers, to enact this statute, and it does not violate the right of free speech and free press of appellant.

Appellant next earnestly contends that he is deprived of freedom of worship. It is true that freedom of worship includes freedom to believe and freedom to act, the first of which is absolute, "but, in the nature of things, the second cannot be". "Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213. But in this case the right is asserted on a false assumption. There is not conflict between the right to worship, including the teaching of such worship, and loyalty to the flag and government of one's country. The Constitution does not define religion. *Reynolds v. United States*, 98 U. S. 145, 25 L. Ed. 244. Appellant professes the religion of Christianity. Without undertaking a definition, the Christian religion, in its most important

ultimate aspect, recognizes, has faith in and worships a Divine Being or Spirit—one Father of all mankind—who has the power to and will forgive the transgressions of repentants and care for the immortal souls of the believers, and which belief brings earthly solace and comfort to and tends to induce right living in such believers. Its primary object is a haven of rest after “life’s fitful fever is over.” It is a fallacy of the rankest kind to assume that loyalty to one’s country and its flag is attributing to them any aspect of divinity or omnipotent power. Since the days of barbarism and savagery, it has been necessary that people live in organized society. Law, order, institutions, the earthly existence of the people, depend upon some organization. But these are earthly—for the protection here of mankind. They have nothing to do with divinity or immortality. Jesus himself announced that almost two thousand years ago. When the spies, seeking to entrap him, asked “Is it lawful for us to give tribute unto Caesar, or no?”, He replied “Render therefore unto Caesar the things which be Caesar’s and unto God the things which be God’s.” Luke XX: 22, 25. As was said in *Nicholls v. Lynn*, (Mass.) 7 N. E. 2d 577, 110 A. L. R. 377, “The term ‘religion’ has reference to one’s views of his relation to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to His Will. . . . With man’s relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.’ The flag salute and pledge of allegiance here in question do not in any just sense relate to religion. They are not observances which are religious in nature. They do not concern the views of any one as to his Creator. They do not touch upon his relation with his Maker. They impose no obligations as to religious worship. They are



wholly patriotic in design and purpose. . . . The pledge of allegiance to the flag . . . is an acknowledgment of sovereignty, a promise of obedience, a recognition of authority above the will of the individual, to be respected and obeyed. It has nothing to do with religion. . . . There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance."

The doctrine is preached by this appellant that the laws of the land should not be obeyed if they conflict with what the believer thinks is the law announced by Jehovah. This would sanctify the reasons for disobeying all human law, regardless of the soundness of the reasons, selecting passages here and there from the Bible, and lifting them out of their context and setting to support the belief. This would result, as in the past it has resulted, in not obeying the law against taking human life if the taker thought such taking justified (*United States v. Macintosh*, 283 U.S. 605, 75 L. Ed. 1303); in the justification of bigamy if defendant thought was right. *Davis v. Beason*, 33 L. Ed. 637. History discloses sects which, as a part of their religious tenets, advocates that there should be no marriage ties, approving promiscuous intercourse between the sexes as prompted by the passions of their members, and as part of their ritual the sacrifice of human beings. That subordinates the authority of the State to the whims of each individual. Such a doctrine is utterly destructive of human society and laws. See the old (1854) but leading case of *Donahoe v. Richards*, 38 Maine Rep. 379. As bearing upon the religious question, but not necessarily as an approval of the rules and holding therein, we cite *Jones v. City of Opelika*, 86 L. Ed. 1174; *Bowden v. City of Ft. Smith*, 86 L. Ed. 1174; *Com. v. Anderson*, (Mass.) 172 N. E. 114, 69 A. L. R. 1097; cases in note 114 A. L. R. 1452.

This statute is directed at affirmative action—action upon others.

Mention is made of the exemption from military service of conscientious objectors. The suggestion is not relevant to the point but it might be remarked that such exemption is based on a policy of Congress and not upon a constitutional right. Application for citizenship was denied applicants in the Macintosh and Reynolds case, *supra*, because the applicants were not willing to fight to preserve their country. The right of freedom of religion is not involved in this case.

Appellant says he cannot be held guilty under the proof here because it fails to show a clear and present danger of accomplishing the evils which are the objects of the statute. The Espionage Statute, as construed, does so require. Schenck and Frohwerk cases, *supra*. The state sedition acts appear not do so, as a rule. Gitlow case, *supra*. The Mississippi statute does not do that. That was not necessary to its validity. *State v. Sinchuk*, *supra*. But if the state statute did so require, we think the proof here sufficient to meet the requirement. The utterances, the circumstances and the objects are all to be considered. The utterances, oral and written together, are certainly calculated to create disloyalty to the state and national governments and reasonably tend to create an attitude of stubborn refusal to salute the flag. "If the act, (speaking of circulating a paper) its tendency and the intent with which it is done, are the same, we perceive no ground for saying that success alone warrants making the act a crime." *Schenck v. United States*, *supra*; *Goldman v. United States*, 245 U.S. 474, 477, 62 L. Ed. 410.

It is true that listners in this case who testified said this was not the result upon them; that they had a feeling of resentment against appellant. But in later days, when adversities of war may become more acute, who can say what their reactions may be? Besides, the proof is that appellant has gone about to the homes of many citizens, of different stations in life and degrees of literacy and intelligence, and of all the races existing in this state—these, or some of them, may, and no doubt have, reacted to the natural re-



sult of these spoken and written words. Again, an attitude of disloyalty and disrespect to the flag and the government is not likely to be shown immediately in some overt act evidencing such attitude. This is fruit to be produced after gradual growth and maturity from the evil seeds which have been sown.

Appellant contends the statute is not valid because it prescribes no ascertainable standard of its violation. The 1918 amendment to the Espionage Act used the expression "promote the cause of its enemies—bring the flag into disrepute—or advocate any curtailment of production in this country of any thing or things—necessary or essential to the prosecution of the war—cause disloyalty—in the military or naval forces of the United States; . . . " the various sedition statutes use such expressions as "advocate, encourage—incite—to encourage or advocate disrespect for law—"; conspiracy to intimidate any citizen in the free enjoyment of any right or privilege under the Constitution; any matter which creates or fosters opposition to organized government, or intended to bring the flag or government into contempt—these and other like expressions have been held to prescribe sufficiently the standard of conduct to meet the requirements of due process of law. *State v. Boyd*; *State v. Fox*; *State v. Sinchuk*; *Whitney v. State*, supra; *Burns v. United States*, 71 L. Ed. 1077; *People v. Lloyd*, supra. It was said in *Sproles v. Binford*, 286 U. S. 374, 76 L. Ed. 1167, "To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the 14th Amendment was intended to secure." "Disloyalty" to the state or nation, or "advocates the cause of the enemies" are expressions found in the Espionage Act and the State Sedition Statutes and those state statutes intended to aid in prosecuting the war. But it is said the adjective "stubborn" before the word "refusal" to salute, honor

or respect the flag renders the Mississippi Statute void in respect to the idea under discussion. The Standard Dictionary of the English Language defines stubborn as "inflexible in opinion or intention; unreasonably obstinate; not easily bent, set aside or overcome; perseverance; persistence." Aside from the other elements contained in the statute, it can readily be understood why the jury might conclude that what was said and done here, and the reasons behind the arguments, would reasonably cause such refusal to salute, honor or respect the flag. That is conclusively shown in the cases above cited where children of the members of this sect choose to be expelled from school rather than salute the flag. There were children present on the occasion at the home of Mrs. Joyner. Illustrations of vagueness and indefiniteness are set out in note 70, L. Ed. 322. The question is not without doubt, but we do not think this law is invalid on this ground.

The suggestion is made that the offense here prescribed, if any, is treason, and punishable only according to the provisions of Article 3, Section 3 of the Constitution of the United States, and the state has no authority to legislate thereon. In the cases where this contention has been made, it has been overruled. *State v. Hennessy*, 114 Wash. 351, 195 Pac. 211; *State v. Hastings*, 115 Wash. 19, 196 Pac. 13; *State v. Hemhelter*, 115 Wash. 208, 196 Pac. 581; *Equi v. United States*, 171 C. C. A. 649, 261 Fed. 53; *Frohwerk v. U. S.*, supra; *Wimmer v. U. S.* 264 Fed. 11; *Schoborg v. U. S.*, 264 Fed.1, petition for certiorari denied, 253 U.S. 494, 64 L. Ed. 1029; *Berg v. Oklahoma*, 233 Pac. 497.

The contention is furthermore made that the State of Mississippi had no power to enact this statute because Congress has legislated upon the same field. It is evident that as to some objects of the statute Congress has not legislated thereon, but, even if that should be true, that would not deprive the state of the power to enact this enabling legislation. See the various cases cited above under state

sedition statutes, and especially *State v. Holm*; *State v. Gibson*; *State v. Kahn*; *Commonwealth v. Widovich*; *Gilbert v. Montana*, *supra*; *State v. Fowler*, (Mont.) 196 Pac. 992; *Halter v. Nebraska*, *supra*; *Noble State Bank v. Haskell*, 55 L. Ed. 116; also note 1918 C L. R. A. 307. In the *Holm* case, the Court, in dismissing the contention that the Espionage Act had superseded the Minnesota Statute, making it unlawful for any person to teach or advocate that any citizen of that state should not aid in the prosecution of the last World War, said "The citizens of the state are also citizens of the United States and owe a duty both to the state and to the United States. The state is a part of the nation and owes a duty to the nation to support, in full measure, the efforts of the national government to secure the safety and protect the rights of its citizens and to preserve, maintain, and enforce the sovereign rights of the nation against the public enemies, and to that end the state may require its citizens to refrain from any act which will interfere with or impede the national government in effectively prosecuting the war against such public enemies. It is the duty of all citizens of the state to aid the state in performance of its duties as a part of the nation, and the fact that such citizens are also citizens of the United States and owe a direct duty to the nation does not absolve them of their duty to the state, nor preclude the state from enforcing such duty." In *Halter v. Nebraska*, *supra*, the Supreme Court of the United States, speaking through Mr. Justice Harlan, said ". . . a state may exert its power to strengthen the bonds of the union, and therefore, to that end, may encourage patriotism and love of country among its people. When, by its legislation, the state encourages a feeling of patriotism towards the nation, it necessarily encourages a like feeling towards the state. One who loves the union will love the state in which he resides, and love both of the common country and of the state will diminish in proportion as respect for the flag is weakened . . ."

We do not pass upon whether the existence of intent in the accused to bring about the objects condemned by the statute is an essential element under the statute or whether, to be valid, the statute must so provide, for the reason that under the instructions of both the state and appellant such intent was made a prerequisite to guilt, and its existence or non-existence was a fact submitted to the jury, and it necessarily found that such intent did exist. We think under all the proof and circumstances here the jurors, as reasonable men, could have found on that question as they did find.

Appellant complains of the refusal of the court to grant him certain requested instructions. We have examined the instructions and reviewed appellant's discussion thereof, and are of the opinion the lower court correctly refused all of them except instruction number four, and that, while this instruction correctly announces theoretical law, it was not applicable to the entire case made out herein, and, in view of the many other instructions granted appellant, could not have resulted in appreciable harm to him, and it is, therefore, not reversible error.

As temporary, emergency, war legislation, we think this statute is valid, and that the conviction of appellant must be upheld.

**AFFIRMED.**

[January 25, 1943]

**DISSENTING OPINIONS**

**IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC: No. 35143**

(Opinion rendered January 25, 1943)

**R. E. TAYLOR v. THE STATE**

**ALEXANDER, J., dissenting.**

I am constrained to believe that the equal division of opinion herein is not due to a divergence of views as to the applicable law, but rather to an application of the law. A lack of unanimity results from the relative importance attached respectively to the war effort as a temporary but sacrificial means, and to personal liberty which is its sacred end. I must confess that I see a greater danger to free speech from the controlling opinion than I can find to the war effort by the frail opinions of appellant whose inconsequence is attested by the revulsion awakened in his accusers. Nor can I detect any menace to our democratic institutions in the abstruse writings in the disseminated literature whose esoteric complexities transcend the comprehension of those who would be the likeliest to succumb to simple sophistries or who would most readily find incompatible a loyalty both to God and to country. While this literature is cast in a religious mold and propagated as a religious creed, I do not feel it necessary to invoke the right of religious freedom to justify my dissent. Literature of the type and content here exhibited has been many times held not to be hurtful to the morals or the general welfare nor seditious in character. *State v. Meredith*, 15 S. E. (2d), 678; *Donley v. City of Colorado Springs*, 40 Fed. Sup. 15; *People v. Northum*, 103 Cal. Sup. 295; *Zimmerman v. Village*

of London, 38 Fed. Sup. 582; *Oney v. City of Oklahoma*, 120 Fed. (2d) 861; *State v. Aspelin*, 203 Pac. 464.

In the dissent in *Cummings v. State*, this day decided, it was thought not inappropriate to review familiar but fundamental constitutional principles, which, because elemental, are too infrequently rehearsed.

In declaring their freedom, the founders of our republic sought to justify in their course "a decent respect to the opinions of mankind." Its continued prosperity is not to be achieved by withholding a like respect for the opinions of its own kind. The State is never called upon to indulge in mere resentment. It has no standard save the morals, peace, and safety of its people. Miss. Constn. Sec. 18. The Federal courts have no common-law jurisdiction of what is a mere slander or libel against the United States in a supposed violation of the peace and dignity of its sovereign power. *U. S. v. Hudson*, 7 Cranch. 32, 3 L. Ed. 259. *A fortiori* the state courts have not. The shore line which marks the ceaseless conflict between the tides of tyranny and the coasts of democracy suffers a fluctuating fate. There are times of high threat and seasons of ebbing power. It was but natural that there should recur periods of definite invasion and recession due to local and transitory influences. At epic intervals the tides are suddenly and effectively thrust back by the downrushing collapse of orderly democracy whose sustaining patience is undermined by the ruthless erosion of gradual and persistent encroachment, and freedom extends its frontiers in a veritable cataclysm of revolution. Only when the state has laid down its sea-wall of positive law can it say to the citizen, "Thus far shalt thou go and no further." But such bulwark is given permanent stability only when reinforced with the requirement that its limitation be marked by an actual overthrow by force or violence. *State v. Aspelin*, *supra*; *McKee v. Indiana*, 37 N. E. (2d) 940; *Bridges v. California*, 314 U. S. 252, 84 L. Ed. 149. "The danger line is reached when one strikes at the very founda-



tion of organized society by inciting rebellion in an attempt to overthrow it." *Com. v. Widovich*, 295 Pa. 311, 145 Atl. 295, *Certiorari Den.* 280 U. S. 518, 74 L. Ed. 588. "The evil itself must be 'substantial'; it must be 'serious'. And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantial evils of sufficient weight to warrant the curtailment of liberty of expression." (Citing authority.) *Bridges v. California*, *supra*. An ultimate result envisaged by an advocate and by him however hopefully predicted or zealously espoused is too vague and indefinite to constitute that "clear and present danger" to peace, morals, and safety which justifies judicial restraint of this freedom. *Fiske v. Kansas*, 274 U. S. 380; *De Jonge v. Oregon*, 299 U. S. 353; *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Schenck v. U. S.*, 299 U. S. 47; *State v. Sentner*, 298 N. W. 813.

The majority opinion asserts that freedom of speech is not the most important constitutional right of the citizen. Avoiding direct dispute, it is nevertheless appropriate to consider whether it is not in fact the keystone of the arch through which our people have passed and through which prosperity is to pass in its pursuit of happiness. Of the "four freedoms" of late enunciated as essentials of the American way of life, all involve freedom of expression. Freedom from want implies freedom to voice our needs; freedom from fear assumes a freedom to cry out if need be; freedom of religion involves the freedom to hear, to think, and to teach. The freedom from fear must include freedom from any basis for fear that forces both without and within our borders may destroy or impair fundamental liberties. This is indispensable in a democracy if the other freedoms are to be vouchsafed self-expression. Historical reference confirms the observation that democracies not only are fearful for their liberties, but in no unreal sense fear liberty. The people free to choose their form of government



are left free to work out their own political "salvation in fear and trembling." But it is more important that they are free to work it out than that they must do so under fear. A citizenship which is immoderately apprehensive for its powers and their hazards is apt to define unity in terms of unanimity and to manifest its fears in an unreasoning tendency to crush divergent ideas by the sheer weight of majority power. Zeal is apt to be an outstanding attribute of the minority, while intolerance is best nurtured in a dominating majority which would better exhibit its confidence in a democratic way of life by a patriotism which includes both confidence and courage. Courts should, if necessary, borrow such courage from the one and vigilance from the other, for it is that other whose fears are enhanced by the menace of destruction, and which finds more frequent occasion to raise the banner of freedom to justify its cause and to wield its sword in its defense. Liberty is not self-executing. "The secret of liberty is courage. A certain penumbra of contingent anarchy always confronts the state but this is entirely desirable since the secret of liberty is always, in the end, the courage to resist." Laski, *Liberty in the Modern State*, p. 80. It is seen, therefore, that public policy is after all a political consensus in which the ideals and prejudices of the individual becomes pertinent data. Courts should not attempt to imprison human personality, nor immure the creatures of conscience within its own sanctuary. We find here the spectacle of a citizen, who having released from this novel bondage a few despised opinions, is judicially held as hostage for a period which could extend for ten years. We must train our anxieties, therefore, not only upon a fancied future effect of appellant's utterances, but upon the present effect of suppressing his right to speak.

This Court would display neither courage nor vigilance in refusing to mask itself against prejudices so thoroughly diffused as to become atmospheric, lest it as a defender

of constitutional liberty constitute itself an accessory to intolerance. Nor may it import into the discussion any matters save those presented by the record. In the arena of political discussion, it is more often the persecuted minorities who are the aggressors, and who as complainants seek the courts, which, as unbiased champions of their rights, must assume, if only to ignore, the irrelevant possibility that in the midst of arms the laws are apt to be silenced by an unwonted clamor and that the barbed barricades which a war hysteria erects against the following of its prescribed course will not deal less kindly with judicial vestments. "A court in the discharge of duty under our system is required to be oblivious to public clamor, partisan demands, notoriety, or personal popularity, and to interpret the law fearlessly and impartially so as to promote justice, inspire confidence, and serve the public welfare." *Wilson v. Russell*, 1 So. (2d) 569 (Fla.). "Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of free discussion." *Thornhill v. Alabama*, 310 U. S. 88.

I approve also the language of Justice Brandeis in his concurring opinion in *Whitney v. California*, 274 U. S. 357, 375, when it was said: "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion."

"Since the general civilization of mankind I believe there have been more instances of the abridgement of the free-

dom of the people by the gradual and silent encroachments of those in power than by violent and sudden usurpation." Madison, Speech in Va. Convention, June 16, 1778. Later echoes are heard in the statement by R. Y. Hayne in the debate with Webster: "There are two distinct orders of men—the lovers of freedom and the advocates of power", and in Justice Brandeis' dissent in *Olmstead v. U. S.*, 277 U. S. 438, 72 L. Ed. 944: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."

This Court, functioning under a Constitution which declares that the people can abolish their own form of government (*Miss. Constn.*, Art. 3, Sec. 6; see also *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066), must view a conflict of mere notions with complacency. It is not unreasonable to assume that the appellant as a citizen free to express opinions of right and wrong and of policy and impolicy, and even to manifest an unwarranted pessimism in rueful prophecy, could consistently be given the floor in the forum of popular discussion to charge his accusers in turn with a form of unamericanism which denies to him that freedom of opinion which is its identifying symbol. There have appeared in our press conscientious objections to the privileges accorded to conscientious objectors to combat service. In turn there has been outspoken and conscientious objections to those who would deny to the critics of those so exempted the right to calumniate them. The ramifications of this self-energizing process in their sum are after all only public opinion of which free speech is its genius. It has of late become current wisdom that there is such a thing as a damaging optimism which may be as justly denounced as a despairing pessimism. If the former does not slow the wheels of war industry it destroys their traction. Despair is apt to expend its last ounce of energy, while blind optimism is apt to withhold its first. The Constitution does not exact wisdom of the citizen but concedes his right to folly.

That opinions weaken our war effort is no test of their legal culpability. In the recent message of the President to the seventy-eighth Congress, he said: "But there has been some criticism based on guess-work and even on malicious falsification of fact. Such criticism created doubts and fears and weakens our total effort." The opinions and decisions of the President himself find daily dissent in the outspoken criticism of the columnist and of the advertiser.

No one should encourage the dissemination of views which tend to weaken the morale of our people. Yet a true report of military setbacks is apt to have this effect. It is an anomaly that the views of those whose high position is likely to assure universal acceptance may be expressed with a ruthless and uninhibited frankness. Dire predictions of defeat are accredited as symptoms of prophetic wisdom even though the revelations be themselves deplored. It is often those whose influence is accounted without consequence, and which therefore could be ignored, who are the favored victims of popular witch-burning. The fears and mockery which their teachings foment are not unwholesome symptoms of a jealous loyalty. But the standard remains within the breast of the accuser who is apt to fall into inconsistency by seeking to pillory lesser minds not because they are hostile to the nation's welfare but rather to the critic's views.

All the State's witnesses denied any reaction to these "teachings" except derision. Forecasts of national disaster are belied by a scorn which the witnesses considered not only deserved but applauded. No propaganda can successfully assault the reason of those whose avenues to conviction are mined with contempt. The language charged to have been used by appellant was feebly prophetic and marked by bizarre predictions whose conditional form divested them of that bold assertion which alone can dissuade opposition. The record here presented, reveals a consistent revulsion against them and belies in itself a fear of their acceptance. Yet our attention has been called to no case

where an expression of personal opinion, short of the advocacy of disobedience to existing law or of the violent overthrow of our government, has been the basis of a successful prosecution. Nor are we aware of any case in our State under the Act of 1942 except against members of the particular cult of which appellant is a member. Our attention has not been called to any attempt by the Post Office Department to prohibit the use of the mails to this literature nor of our Federal Bureau of Investigation to suppress this sect, whose activities, however exposed to popular disapproval, have extended back for many years.

Since disloyalty may connote language or acts which go no deeper than a disapproval or lack of sympathy with governmental policy, it lacks a reasonably definite standard of guilt. A stronger and more sinister term is found in the New Mexico statute—the word “revolution.” Yet it was there held that since it comprises both peaceful and violent means, and only the latter may constitutionally be punished, the act was void. *State v. Diamond*, 202 Pac. 988, 20 A.L.R. 1527. We must not interpose our own personal sentiments however difficult it may be to render them invisible—into a realm where compulsions must remain self-imposed.

My views have been elaborated almost to the measure of dissertation. Yet we have been confronted with an occasion where an assumption that these principles were known and read of all men would seem to have been unwarranted.

The controlling opinion would avoid the impact of the foregoing decision by designating the Act of 1942 as war emergency legislation and deducing from this circumstance altered principles for gauging its constitutionality. No loyal citizen would contest the generality that a deplorable incident of war is the derangement of social, political, and economic life and that the emergency begets a need for standards of conduct and exercise of restraints not applicable to times of peace. I see no reason, however, to justify a sacrifice of the freedom of speech by war when war is

itself justified as a price for its maintenance. I do not gainsay the propriety, even the absolute necessity, for curbing all activities or privileges which become distorted to the point of sedition or breach of existing law. It may be that often *inter arma silent leges*, but courts have never recognized that in time of war the citizen must remain silent nor conscience inarticulate.

It will be found that the cases invoked to sustain the controlling view on this point deal chiefly with acts or advocacy which violates existing law, or which undermines the discipline or efficacy of our armed forces or the functioning of our military machine. Most of them involve violations of the Espionage Act of 1917 which contained positive prohibitions against definite conduct. Yet the purpose and scope of that Act is succinctly shown in Bishop's Criminal Law (9th Ed.), Vol. 1, p. 326, where it is stated: "The purpose of the espionage act passed by Congress on June 15th, 1917, was not to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk but only falsehoods wilfully put forward as true with intent to interfere with army and navy operations. Remote and secondary results not intended by the defendant, arising from a fair and truthful discussion of matters of public concern do not fall within its purview. Nor is the mere abuse of the president before a number of workingmen who are not in the military service an offense against it as it does not cause insubordination, disloyalty and a mutinous spirit in the military and naval forces." The Act of 1942 does not define disloyalty, and it must be conceded that neither "violence" nor "sabotage" is charged. There is "no advocacy of the cause of the enemies of the United States" nor is any other definite act specified in the statute charged save the dissemination of literature "which reasonably tends to create an attitude of stubborn refusal to salute . . . the flag of the United States." I have taken occasion to express my views on this phase of the case in the dissenting opinion



in *Clem Cummings v. State*, No. 35,155, this day decided.

Such acts or conduct must create a clear and present danger in that by force or violence the orderly processes of government will be subverted, or that its exercise of powers for the general welfare will be so hampered as to create an imminent menace to the morals, safety, or peace of the State. The most practical standard involves the advocacy of that which is criminal or unlawful either in the end or the means. This principle was adhered to in the *Stromberg*, *Herndon*, *Fiske*, *De Jonge*, *Sentner*, *Near*, *Schenck*, and *Bridges* cases, *supra*, in which there was outspoken advocacy of criminal syndicalism, communism, bolshevism, and other tenets universally deemed by loyal citizens as distinctly unamerican. Yet so long as the advocacy of religious principles remains in the domain of mere discussion, it cannot constitutionally be punished as sedition. It must bear fruitage in an overt, hostile, or treasonable act. *State v. Diamond*, *supra*; *Schoberg v. U. S.* 253 U. S. 494, 64 L. Ed. 1029; *Com. v. Widovich*, *supra*; *Reynolds v. U. S.*, 98 U. S. 162; *McKee v. Indiana*, *supra*; *Watson on the Constitution*, vol. 2, p. 1379; *Montesouieu, Spirit of Laws*, vol. 1, p. 194; *Schroeder, Constitutional Free Speech*, pp. 412, 438.

War is an emergency chiefly because our liberties are at stake. There is neither logic nor law to support the view that these liberties must be surrendered in order to be saved. In a classic expression in *Ex parte Milligan*, 4 Wall. 2, 18 L. Ed. 281, 295 the Court said: "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which



it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority." There are in fact certain constitutional rights which are illuminated by the fierce fires of war when those required to submit to equal responsibilities are given more patient hearing as to their asserted rights. It was stated in the address of the President to the Congress, January 7, 1943: "In this war of survival we must keep before our minds not only the evil things we fight against but the good things we are fighting for. We fight to retain a great past and we fight to gain a greater future." To use the phrases of war itself, liberty may not be rationed. Nor is it expendable.

The opportunity should not be waived to call attention to other significant requirements of the statute in order that they may receive an emphasis comparable to those parts stressed to sustain conviction. The statute requires that the distribution of literature and the advocacy by speech should be done not only 'intentionally' but the acts or words must be 'designed and calculated' to encourage violence, sabotage or disloyalty. In passing it is well to dispel a popular notion that the law can compel loyalty; it can only punish speech or acts which operate to or are intended and calculated to produce definite and prohibited acts. "Offenses against the espionage act are in the nature of attempts or efforts with specific intent to commit specific crimes which efforts fail though they are apparently adapted to accomplish the crime are of sufficient magnitude and proximity to the object of their operation to be reasonably calculated to excite public fear and alarm." Bishop's Criminal Law, p. 327.

War does not restrict fundamental freedoms but rather enlarges the legislative field by bringing into play new laws designed to preserve the integrity of the war effort and to protect the functioning of our army and navy. But in the

end the principle remains the same. Mere opinions even though beneath contempt are nevertheless above the law.

The controlling opinion, while willing to construe the language as subversive, finds its menace in its aspect as a forbidding symbol. Of what it is a symbol must be addressed to the suspicion or prescience of the individual judge. At its worst it could be symbolic only of underlying motives or subtle purposes, which, if true, means only opinions and not acts. Criminal laws never punish mere mental traits, nor even criminal intent alone. The virtual internment of appellant on such grounds would be tantamount to an arrest on suspicion, or an imprisonment in default of bond to keep the peace.

Were symbols important and relevant, apt example could be found in the fact that while the fate of the appellant is being considered our Government has adopted a new design for its postage stamps, honoring the 'Four Freedoms', thereby symbolizing that it respects and protects the private opinions of the writer's message not only, but also blazons to the world its own defiant stand for a freedom of speech whereby the author can, if he so desire, shout his opinion from his own housetop.

The maxim, *Salus publicae suprema lex est*, is a slogan both of peace and of war. But it is not the safety of the people but of their liberties which is the supreme goal. It is in war especially that our people have heroically proved that liberty is of more value than life. It is only the traitor who purchases life at the cost of a people's liberty.

This Court should say nothing that would encourage expressions of the type here involved. Yet I do not think that the emergency is such that even those deemed Philistines by their accusers should be destroyed by crushing both them and our liberty amid the wreckage of its own temple.

Anderson, J., and Smith, C. J., concur in this opinion.

IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:

No. 35143

(Opinion rendered January 25, 1943)

R. E. TAYLOR *v.* THE STATE

SMITH, C. J., dissenting.

The indictment in this case contains only one count and charges the appellant with violating not the whole of Chapter 178, Laws of 1942, but with violating the "disloyalty" and the "respect for the flag" provisions thereof, two distinct crimes which should have been charged in separate counts, but no objection has been made thereto by the appellant. The punishment prescribed by this statute is "imprisonment in the state penitentiary until treaty of peace be declared by the United States, but such imprisonment shall not exceed ten years"; and this appellant was sentenced accordingly. I will put aside this indeterminate sentence provision of the statute which in effect is but a variation of concentration camp confinement for the duration of the war, and will express no opinion thereon.

I concur in all that Judge Alexander has said, but it may not be amiss for me to specifically set forth two of the reasons why I think the disloyalty provision of this statute is constitutionally invalid. 1. As Judge Alexander has pointed out, a sufficiently ascertainable standard of "guilt" can not be found in the word "disloyalty" to satisfy the requirements of due process of law. 2. As my affirming associates admit, for the statute to be constitutionally valid it must be within—must not exceed—the state's war power. This power exists only when the nation is at war and is to enact legislation in aid of the prosecution of the war or to prevent the obstruction of its successful prosecution. Article I, Section

8, Clause 11, and Section 10 of our National Constitution. *Gilbert v. Minn.*, 245 U. S. 325, 65 L. Ed. 287, 16 C. J. S. p. 631. The disloyalty to the State or Nation condemned in this statute is not limited therein to such as may adversely affect the prosecution of this war but covers all such disloyalty whether it affects the prosecution of the war or not, and therefore is in excess of the State's war power.

I cannot close this opinion without saying that I am at a loss to perceive how the successful prosecution of the war in which we are now engaged can be so obstructed by such things as this appellant here said and did as to justify depriving our people of the blessing of the freedom they have enjoyed since our national constitution was adopted to believe, write and say what they pleased as to the policies and conduct of their state and national governments. I may not, and do not, believe what this appellant is teaching and I unhesitatingly say that until we have won this war he should refrain therefrom, but nevertheless he had the constitutional right to say and do what he here said and did. It would be well for us to pause in our prosecutions of the members of this misguided but war harmless sect (Jehovah's witnesses) and ponder the wise words of Madariaga, quoted by the late Lord Tweedmuir in "Pilgrim's Way", page 222: "A democracy that goes to war, if beaten, loses its liberty at the hands of its adversary; if victorious it loses its liberty at its own hands", and be warned thereby that if we are not to lose our liberty in winning this war, we must be careful to sacrifice it for the time being only to the extent necessary to enable us to fight the war.

Alexander and Anderson, JJ., concur in this opinion.

**IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:**

**No. 35143**

**(Opinion rendered January 25, 1943)**

**R. E. TAYLOR v. STATE OF MISSISSIPPI**

**ANDERSON, J., dissenting:**

I join with Judges Smith and Alexander in their dissents in the Jehovah's witnesses cases. I feel constrained, however, to add the following to the views they have expressed:

The statute involved, Chapter 178, Laws of 1942, page 211, is directed at treason against both the State and the United States. The title itself so states. There is involved here, however, only prosecution for treason against the State. The fourth paragraph of the preamble to the statute is in this language: "Whereas, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the State of Mississippi are a menace to the safety of this [state] and these United States." Section 1 of the enacting provision follows: "Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by

action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create any attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the State of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States, but such imprisonment shall not exceed ten years."

The Constitution of the State, Section 10, defines treason against the State and the evidence necessary to convict of the crimes in this language: "Treason against the state shall consist only in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." That is exactly the same language used in Article 3, Section 3 of the Constitution of the United States except the words "United States" in place of the words "the state". Insurrection, sedition, sabotage and syndicalism are merely elements which go to make up treason. 33 C. J. Page 159, Sections 4, 12, 13 and 14. When the proposition is squarely presented to the Supreme Court of the United States my opinion is that Court should and will hold that the constitutional definition of treason can neither be added to or taken from by legislation; that the constitutional definition is complete and exclusive. The early lower federal court decisions so held without exception. See *U. S. v. Burr*, (C. C. Va. 1807), 4 Cranch (Appendix) 455, 25 Fed. Cas. No. 14692a. In that case the court said, "The people have refused to trust the national legislature with the definition of the crime of treason". *U. S. v. Greathouse* (C. C. Cal 1863) 4 Sawy. 457, 26 Fed. Cas. No. 15254; *U. S. v. Werner*



(D. C. Pa. 1918) 247 Fed. 708. A mere conspiracy to overthrow the Government, however atrocious, does not of itself constitute treason. "The intention and the act, the will and the deed, must concur." U. S. v. Mitchell (C. C. Pa. 1795), 2 Dall. 348, 1 Law Ed. 410, 26 Fed. Cas. No. 15788. U. S. v. Fricke (D. C. N. Y. 1919), 259 Fed. 673. Mere words, oral, written or printed, however treasonable, do not constitute an overt act of treason within the definition of the crime. 5 Blatchf. 549, 30 Fed. Cas. No. 18271. 1 Bond 609, 30 Fed. Cas. No. 18272. War can only be levied by the employment of actual force. "Troops must be employed, men must be assembled, in order to levy war." U. S. v. Burr, *supra*. (These cases digested in U. S. C. A., Title 18, pages 5-8, inclusive.)

Under Article 5 of the Constitution of the United States, that instrument can be amended, changed or repealed in its entirety, and another Constitution adopted, provided the proposal is properly made and ratified by the Legislatures of three fourths of the United States. In other words, the Federal Government is given power, to be exercised in the manner provided by that article, to legally repeal the Constitution in whole or in part, and if repealed in whole, adopt another of any kind or character whatsoever. In other words, our Democracy could legally "commit suicide." It could adopt a dictatorship in its place. This could not, however, be brought about by force of arms. The change would have to be by peaceful means. But it would be permissible for private individuals, public assemblages and public press and otherwise to advocate the change. Provided, of course, the limit would be treason against the Government, as defined by the Constitution.

It is true that the constitutional war powers of the Congress, as provided in paragraphs 1-16, inclusive, of Article 8, are large. And in order to successfully conduct a war many constitutional provisions may be ignored, but not all of them. The freedom of speech, freedom of religion, and freedom of the press, the three most outstanding constitu-



tional rights, are not entirely wiped out for the purposes of war. Suppose Congress should declare that the doctrines of a certain religious organization are hampering the country's war efforts and make it a crime to further advocate them. Would the members of the society have to lay aside and repudiate their religion during the war? Suppose Congress<sup>sh</sup> should declare that neither by word of mouth nor by means of the public press the conduct of the war should be criticized, and make it a crime so to do. In my opinion those three fundamentals cannot be abridged to any extent in time of peace, and very little, if any, in time of war. In the past the attempt to destroy any religious sect has resulted in its permanent establishment and growth. Take, for illustration, the Mormon religion,—the founder, Smith, was assassinated on account of his religion. The members, to a large extent, were driven out of the east into the new west; and now in the state of Utah it is the outstanding religion of that State, with many times more members than any other religious organization.

What has been written above applies as well to the case of *Clem Cummings v. State*, this date decided.

## Stipulation

### IN THE SUPREME COURT OF MISSISSIPPI

<b>R. E. TAYLOR, Appellant,</b> v. <b>STATE OF MISSISSIPPI</b>	}	No. 35143
<b>CLEM CUMMINGS, Appellant,</b> v. <b>STATE OF MISSISSIPPI</b>	}	No. 35155
<b>BETTY BENOIT, Appellant,</b> v. <b>STATE OF MISSISSIPPI</b>	}	No. 35163

Now come Appellants, R. E. Taylor, Clem Cummings, and Betty Benoit, by and through their attorney, Hayden C. Covington, and the Appellee, The State of Mississippi, through its attorney, George H. Ethridge, Assistant Attorney General, and stipulate as follows:

In order that these appeals may be submitted to the United States Supreme Court on the merits at the present term, it is agreed that the appellee, The State of Mississippi, waives its right to file a statement disclosing any matter or ground making against the jurisdiction of the United States Supreme Court asserted by the appellants in their jurisdictional statements and reserves the question of whether or not the cases should be dismissed for "want of substantial Federal question" for consideration of the Federal questions presented on a hearing of these causes on the merits and oral argument thereof before the United States Supreme Court.

Dated: February 23, 1943.

Hayden C. Covington  
 Attorney for Appellants

George H. Ethridge  
 Attorney for Appellee

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 826



RALPH E. TAYLOR, *Appellant*

*v.*

STATE OF MISSISSIPPI, *Appellee*



## APPELLANT'S BRIEF

### Opinion Below

The opinion of the Supreme Court of Mississippi is reported in 194 Miss. . . . , and in 11 So. 2d 663. It appears also in the record, pages 140 to 181.

### Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statutes could be received as a matter of right on writ of error.

### Timeliness

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 140) The petition for appeal and other papers required by the rules of this court are filed within three months from the date of such judgment. R. 194-207.

## **The Statute**

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

### **HOUSE BILL No. 639**

**AN ACT** to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.

**WHEREAS**, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and

**WHEREAS**, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and

**WHEREAS**, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative department of the state of Mississippi and of these United States shall enact all laws and do all things necessary to insure domestic tranquillity and promote the common defense and general welfare of the people thereof; and

**WHEREAS**, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state

of Mississippi are a menace to the safety of this State and these United States.

NOW, THEREFORE,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Sec. 2. Any person in possession of maps or parts of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, transportation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the intention of such



persons to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding \$1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the courts, such decision shall not be construed so as to render invalid the remainder of this act.

Sec. 7. That this act shall take effect and be in force from and after its passage.

Approved March 20, 1942.

### **The Indictment**

**MADISON COUNTY CIRCUIT COURT**  
**June Term, A. D. 1942**

## STATE OF MISSISSIPPI, MADISON COUNTY

THE GRAND JURORS of the state of Mississippi, taken from the body of good and lawful men of Madison County, elected, empaneled, sworn and charged in inquire in and for said County at the Term aforesaid of the County at the Term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that R. E. TAYLOR AND MRS. R. E. TAYLOR late of the County aforesaid, on the 29th day of June A. D. 1942, at the County aforesaid did then and there wilfully, intentionally, unlawfully, and feloniously teach and disseminate teachings orally in that they said to Mrs. T. K. Joyner, Mrs. W. B. Denson, Mrs. Houston Bryant, and other persons whose names are at this time unknown to the Grand Jury, "*It is wrong for the President to send the army across for they are just being shot down for nothing. Hitler will rule, he will not come over here to do it. He won't have to. If we would quit kneeling and worshipping our flag peace would come to us, and study and learn this literature and worship in the right way peace would come to earth, but as long as we go around worshipping our flag and government, we will never have peace, for we just worship our flag and government for our religion*", and in that they said to the same parties, "*It is wrong for the President to put our boys in uniform and send them across. The sooner we quit bowing down to the flag that much sooner we will have peace.*" and that they said to Mrs. T. K. Joyner and Mrs. W. B. Denson that their boys might have thought they were doing right, but that it is wrong to fight our enemies; and other words and teachings all said teachings and words were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to

create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America and the State of Mississippi. And did then and there wilfully, intentionally unlawfully, and feloniously distribute literature and printed matter in that they did hand out and distribute to Mrs. T. K. Joyner, Mrs. Houston Bryant, Mrs. W. B. Denson, and other persons whose names are unknown to the Grand Jury at this time, books and pamphlets entitled GOD AND THE STATE which contain the statement, "Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment—", and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled REFUGEES which contain the statements, "All nations of the earth today are under the influence and control of the demons . . . All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is on the losing side. All of such nations are against the Theocratic Government, that is the government or kingdom of the Almighty God . . . All are under the control of the invisible host of demons." and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled LOYALTY which contain the statement, "For the Christians to salute a flag is in direct violation of God's specific commandment", and which contain other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled END OF THE

**AXIS POWERS, COMFORT ALL THAT MOURN** which contain the statement, "Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of **THE THEOCRACY** they must hold themselves entirely aloof from warring factions of this world.", and which contain other paragraphs and statements of disloyalty to the United States of America; all of said literature, printed matter, books and pamphlets were published by Watchtower Bible and Tract Society, Inc., International Bible Students Association, and were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States of America, and the State of Mississippi contrary to the form of Statute in such case made and provided, and against the peace and dignity of the State of Mississippi.

H. B. Gillespie

DISTRICT ATTORNEY

[R. 5-8]

### **Statement**

Appellant is a native of Alabama. He is an ordained minister of Jehovah God and a witness for His Kingdom of righteousness. He is classified by his local draft board in Class IV-D, the classification of all ministers. (R. 106) During the first World War he volunteered for service and after serving eighteen months he purchased his release. (R. 126) Thereafter he joined the army again and served until 1931 when he was discharged. (R. 134) He has been one of Jehovah's witnesses for approximately twenty years and a full-time "pioneer" minister preaching the gospel together with his wife for about eleven years. (R. 106, 118) He came to Canton, Mississippi, about three months before the trial to perform missionary work from house to house

among the people. (R. 117) During this time he and his wife worked together and lived together at Canton. (R. 104, 107) Appellant was ordained by Jehovah God according to the scriptures recorded at Isaiah 61: 1, 2. He preaches by distributing Bible literature from house to house among the people. This is the way commanded by Almighty God in the scriptures.—Isaiah 43: 9-12; Matthew 24: 14; Acts 20: 20; Acts 5: 42; Acts 3: 23; 1 Corinthians 9: 16. R. 123, 105.

In the latter part of May, 1942, he called at the home of Mrs. Houston Bryant and placed two books with her while working the neighborhood from house to house. (R. 46) One of these books entitled *Children* was introduced in evidence at the trial. (R. 54) During the early part of June, 1942, appellant called back in that neighborhood at the home of Mrs. Joyner, who lived across the street from Mrs. Bryant. Mrs. Bryant was at the home during the time of appellant's visit. (R. 46) Mrs. Joyner and Mrs. Bryant each obtained a combination of twenty-two books and each gave appellant a contribution of thirty-five cents. R. 47.

Prior to the time of this visit, the women had heard of Jehovah's witnesses and had been told by Mr. Vallia O'Neal, local official of the American Legion (R. 63), and Mr. Nelson Cauthen, County Attorney, that Jehovah's witnesses were against the government as were the books they distributed. (R. 58) Those officials advised the women to obtain the books as evidence against appellant. Both women admitted that they were prejudiced against appellant before he called and that they were entrapping the appellant for the Legionnaires and the prosecuting attorney. R. 63-64, 66.

Appellant knew that Mrs. Joyner had lost a son in the Pearl Harbor disaster of December 7, 1941. The women said that he stated he was calling to comfort Mrs. Joyner. (R. 59) The women could not remember the substance of the conversation that then took place or any particular words used, except those words described in the indictment which

they recalled clearly and verbatim. (R. 47-48, 58, 69, 90) During the course of the conversation in which appellant explained Bible prophecy and the books and booklets distributed, the two women accused appellant of saying:

"... it was wrong for our President to send these boys across in uniform to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come here to rule; and he said the quicker the people here quit bowing down and worshiping and saluting our Flag and Government, the sooner we would have peace. . . . He said it was wrong for us to fight our enemies; that we were being shot down for no purpose at all." (*Mrs. Bryant's testimony*, R. 47-48)

"... the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there." (*Mrs. Joyner's testimony*, R. 69)

The women said that appellant arrived at the house with his wife and a little girl accompanying him. (R. 74) That appellant had his Bible with him and he began to talk about the beast with seven heads and ten horns, described in Revelation, as totalitarian or Hitler-rule. (R. 75) That he quoted Daniel 2:44: "In the days of these [totalitarian] kings shall the God of heaven set up a kingdom which shall never be destroyed; and . . . it shall break in pieces and consume all these kingdoms, and it shall stand forever." Appellant said to Mrs. Joyner that her boy would be resurrected and come back and live with her forevermore, and



that she would see him again on earth under conditions like heaven on earth. (R. 75-76) They were advised by appellant that there were two divisions of people, one a sheep class, and the other a goat class; and that they would have to study the literature to learn how to become of the sheep class. (R. 81) That appellant said that he was not selling the books but was distributing them to the people to show them the right way to live and to teach their children. (R. 55) Appellant quoted much scripture to them and stated that this would be the last war before Armageddon. R. 64.

It is not clear whether the women read all the books they obtained or not. Mrs. Bryant said that she had read the passages from the various books introduced by the prosecuting attorney into the evidence. (R. 53) However, it appears that all the books were immediately turned over to the prosecuting attorney. R. 64, 73.

Each woman testified that the statements made by the appellant did not make them feel against the government. It did not make them feel against the Flag. That they loved the government more after reading the literature and listening to appellant than before. R. 62, 91.

During the latter part of May or the first part of June, 1942, appellant and his wife called at the home of Mrs. W. B. Denson, one of the complaining witnesses. She said they stated their call to be for the purpose of comforting her concerning the loss of her son. (R. 83) She obtained a blue-covered book *Children* and several little books and testified that appellant stated

" . . . it was wrong for the President to put uniforms on our boys and send them to fight the enemies; and they said the sooner we quit bowing down to the Flag—to the Government and her Flag, that much sooner would we have peace; that we couldn't have peace as long as we believed in saluting the flag. And he said that Hitler would rule; he said that he wouldn't



come here, he wouldn't have to, but he would rule; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, 'You know you would hate to see a German mother lose her son as much as you would anyone else.' But he told me to study the literature, and that I would get comfort from it." (R. 83-84) "He said my boy was wrong, but no doubt he thought he was right, being where he was fighting the enemy, but it was wrong; that the President was wrong in putting a uniform on him and putting him in that fight down there; but he said if I would have the faith and study and believe, my boy would come back and I would have the opportunity of teaching him again, just as I would have to follow his instructions and all these things to do right." (R. 85-86)

Mrs. Denson said that nothing appellant did or said caused her to have any disrespect for the government or the flag, but on the contrary she added that it caused her to have "more respect for our government" than before. R. 91.

Appellant emphatically denies having said to any of the complaining witnesses or anyone else, that Hitler would rule at anytime anywhere on earth. He never discussed the flag at anytime he says. He denies discussing that it was wrong to put the uniform on the boys and send them over. He states that at the time of the conversation he made no attempt even to discuss this subject, and he denied several times making the statements attributed to him by the women. (R. 112-115, 117, 126-128) He testified that he was neither a pacifist nor a conscientious objector. R. 135.

Appellant had learned of the women's loss of their sons from his wife who had previously called at the homes of the ladies. (R. 107) He began talking to Mrs. Joyner about the Kingdom of God. Explanation was made that in the history

of man there were three worlds mentioned in the last chapter of 2nd Peter, the one before the flood, the present evil world and the new world to come. He said that the Scriptures indicated that we are nearing the time for the change-over from the present old world to the new world or God's Kingdom that all Christians for centuries have been praying for, "Thy kingdom come . . ." (R. 107) Then Mrs. Joyner and his wife began to converse about the loss of Mrs. Joyner's boy. Appellant said Jehovah's witnesses use the Scriptures for comfort and he began to explain about the two powers, the heavenly and the earthly. He admits saying: "I am not your boy's judge, or you either, but the Scriptures point out there is a little flock of 144,000 that will be in heaven, the earth will be made a paradise, and how the conditions of the Garden of Eden would be restored, and if Adam hadn't disobeyed the Lord they would be living here today. So, as they said, I spent about an hour and a half at one place; and I can remember is that; but those were what we spoke on, as we do in the ordained [ordinary] work talking about the kingdom." (R. 107-108) During the conversation, he mentioned Hitler in the connection that Hitler "represents totalitarian rule spoken of in the 17th chapter of Revelation", which is the beast described as having 7 heads and 10 horns. (R. 108) He told the women that "this picture is symbolic picture representing totalitarianism threatening all the world today". (R. 109) During the conversation he pointed out that according to Daniel, eleventh chapter, Hitler or totalitarian rule would not win the present conflict, for it is said: "he shall come to his end, and none shall help him" thus making it clear that Hitler would not win the war. R. 109.

Substantially the same conversation took place at the home of Mrs. Denson. (R. 111-113) During that conversation Mrs. Denson interjected: "I pray every night for every mother that has lost a son." Appellant says that was where the "praying for German mothers" came in and that

Mrs. Denson made the statement rather than he or his wife. R. 111.

During the conversation he pointed out that from Almighty God's standpoint there is no distinction between Baptist, Presbyterian and Catholic as the Bible teaches "one Lord, one faith, one baptism." (R. 111-112) Appellant said: "The Lord didn't recognize boundaries in establishing his kingdom, or the devil didn't either in establishing his. He is out today to use Hitler to bring on a great period of destruction and establish thereon his new order. The devil is a great mimic, and he loves to counterfeit what the Lord does, and do it first, or ahead of time; and so, the devil can read the Bible, and he knows the Kingdom is coming, and the Scriptures foretell clearly what will be the result." R. 112.

Appellant testified he refused to salute the flag. That he came to this conclusion in 1934 when he learned that the flag-salute movement in Germany was advanced by Hitler and used to regiment the people there. R. 114, 132.

Appellant admits distributing the various pieces of literature about which the women testified and every piece of literature introduced in evidence against him was admitted to have been distributed by him. R. 116.<sup>1</sup>

<sup>1</sup> The pieces of literature named in the indictment and introduced in evidence are:

(1) GOD AND THE STATE

Exhibit No. 2 — Witness Mrs. Bryant (R. 52)

Exhibit No. 2 — Witness Mrs. Joyner (R. 72)

Exhibit No. 2 — Witness Mrs. Denson (R. 91)

(2) REFUGEES

Exhibit No. 1 — Witness Mrs. Denson (R. 85)

Exhibit No. 3 — Witness Mrs. Bryant (R. 52)

(3) END OF AXIS POWERS — COMFORT ALL THAT MOURN

Exhibit No. 1 — Witness Mrs. Joyner (R. 71)

Exhibit No. 1 — Witness Mrs. Denson (R. 91)

*[Concluded on next page]*

## History of Proceedings and Federal Questions Raised Below

### CIRCUIT COURT PROCEEDINGS

Appellant filed and urged a motion to quash the indictment (R. 10-12), which was overruled and exception allowed. (R. 13) A demurrer to the indictment was duly filed and urged (R. 13-16), which was overruled and exception allowed. R. 16.

Appellant pleaded "not guilty". R. 17.

At close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 92-94), which was overruled and exception allowed. (R. 94) At the close of the entire case and when both parties had rested their case appellant duly filed a motion for directed verdict requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 135-138), which was overruled and exception allowed. (R. 138) A motion for new trial was filed complaining of each of the foregoing rulings, which was overruled. R. pp. 37-39.

[NOTE 1—*Concluded from preceding page*]

The pieces of literature not named in the indictment but which are introduced in evidence are:

(4) **CHILDREN**

Exhibit No. 1 on cross examination

—Witness Mrs. Bryant (R. 54)

(5) **HOPE**

Exhibit 2(a) — Witness Mrs. Joyner (R. 73)

(6) **LOYALTY**

Exhibit No. 1 — Witness Mrs. Bryant (R. 51)

Exhibit No. 2 — Witness Mrs. Denson (R. 85)

(7) **ORDINATION CERTIFICATE**

Exhibit No. 1 — Witness Mr. Taylor (R. 105)

Exhibit A on cross examination

—Witness Mr. Taylor (R. 121)

One copy of each of the said exhibits has been previously tendered to this court. Each one of the above is printed and published by the Watchtower Bible and Tract Society, 117 Adams Street, Brooklyn, New York.

Under grounds 1 and 2 of the motion to quash (R. 10-11) the demurrer (R. 14), the motion for peremptory instruction (R. 92), and the motion for directed verdict (R. 135-136), appellant attacked the statute on the grounds that on its face, by its terms, and as construed and applied it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the first and fourteenth amendments to the United States Constitution. R. 10-11, 14, 92; 135-136.

Under grounds 4 and 5 of the motion to quash (R. 11), demurrer (R. 15), motion for peremptory instruction (R. 93), and motion for directed verdict (R. 136-137), appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated section 1 of the Fourteenth Amendment to the United States Constitution. R. 11, 15, 93, 136-137.

#### SUPREME COURT OF MISSISSIPPI PROCEEDINGS

In the Supreme Court of Mississippi under assignments of error numbers 1, 2, 3, and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 183-184) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and of worship, contrary to the 1st and 14th Amendments. (R. 187) Under ground 11 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the 14th Amendment. R. 187.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered

and overruled the same. (R. 140-163) The court held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press contrary to the federal constitution. (R. 144) The court held that as *construed and applied* that the rights of freedom of speech, and of press were not abridged contrary to the first and fourteenth amendment. (R. 144-156) The court held that freedom of worship of Almighty God was not impaired by the conviction and judgment. R. 156-159.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of the validity of the same.

### **Specification of Errors to be Urged**

(1) The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Supreme Court of Mississippi erred in failing to hold that, as construed and applied to the particular facts and circumstances of the case, the statute in question is unconstitutional because, as so construed and applied, it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The Supreme Court of Mississippi erred in failing to hold that, on its face and as construed and applied, the statute violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellant of liberty without equal protection and due process of law.

(4) The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

(5) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

(6) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

(7) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the state's evidence.

(8) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.



## **Points for Argument**

### **ONE**

**The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.**

#### **A**

**Freedom of speech historically is guaranteed by the First Amendment and the states are prohibited from abridging the right by the Fourteenth Amendment.**

#### **B**

**Existence of a state of war does not suspend, restrict or narrow the guarantees of freedom of speech contained in the First Amendment.**

#### **C**

**As construed by the highest court of Mississippi the statute is not confined directly to the needs of the police power broadened over peace-time legislation, but deals with matters which at most are only indirectly connected with the war and is therefore in excess of authority.**

#### **D**

**As construed by the highest court of Mississippi the statute is void because it does not require a showing and finding that the language presents a clear and present danger to the war effort, protection of which is the claimed purpose of the statute.**

**E**

There is no evidence that the language complained of constitutes a clear and present danger that any of the evils aimed against by the statute will result, and the undisputed evidence further shows that there was no reasonable tendency of appellant's conduct to cause the results prohibited by the statute.

**F**

The judicial branch of the government rather than the legislative authority must decide when the liberty of speech must yield to the police power, and in performing this task the courts should make a deeper inquiry than when property rights are involved because presumption of validity of legislative enactments does not overcome guarantees of the First Amendment.

**G**

The cases discussed show that the rule this court applies does not warrant the abridgment of the right of free speech under the facts and circumstances revealed in this case.

**T W O**

The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.

**A**

Freedom to worship Almighty God is guaranteed by the First Amendment and the states are prohibited from abridging this right by the Fourteenth Amendment.

**B**

Since appellant's method of preaching and the way of worshipping Almighty God is by visiting the people at their homes and discussing the Bible with them, the foregoing freedom to worship is a basic issue in this case and it cannot be judicially declared irrelevant or not involved.

**C**

No abuse of the exercise of the right of freedom to worship Almighty God is shown by the facts so as to warrant an interference under the statute.

**D**

Speech and writings which contain opinion relating to interpretation and fulfillment of prophecy, the relation between the Creator and the creature and the duties imposed by conscience should be given the fullest protection possible against interference by statute, so long as there is no clear and present danger of open violence, or a violation of the laws of property or morality.

**E**

There is no evidence that the activity of the appellant in preaching the gospel constituted a clear and present danger that any of the things aimed against by the statute will result.

**F**

The oldest cases in point, recorded by the Eternal Judge in the volume of His Word, show that the words spoken and printed, here drawn in question, are proper and right and are entitled to protection because this is a Christian nation binding itself to the recognition of the supremacy of the Law of Almighty God as expressed in the Bible.

**G**

Many recent holdings of the courts sustain the right of appellant to distribute literature and to speak the words complained of under the guarantee of freedom to worship Almighty God.

**THREE**

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.

**A**

The broadest possible latitude in criticism and comment on world events, national affairs, state and national governments and public officials, was intended by the framers of the First Amendment to be guaranteed to the press, in times of war as well as in times of peace.

**B**

The publications in question related to a matter of fair comment on present-day world events and course of action taken against Jehovah's witnesses in which the public had an interest.

**C**

The publications in question contained only statements made by Jehovah's witnesses as an official explanation of their attitude toward the national flag and governments of this world in defense of the charges made against them and misunderstandings resulting from false reports concerning their loyalty.

**D**

There is no evidence that the writings complained of constitute a clear and present danger that any of the things aimed against by the statute will result, nor 'reasonably tend' toward such result.

**E**

The distributor of the literature and the publisher are equally protected against application of the statute to their activity because distribution as well as publication or printing is protected.

**F**

As construed and applied, the statute absolutely prohibits exercise of the right of freedom of the press previously condemned by this court.

**G**

The cases involving publications show that the rule applied by this court does not allow abridgment of the right of freedom of the press in the circumstances shown in this case.

**FOUR**

The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

## FIVE

The general verdict rendered against appellant will not support a conviction where the undisputed evidence shows that either ground of conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.

## ARGUMENT

### ONE

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

#### A

Freedom of speech historically is guaranteed by the First Amendment and the states are prohibited from abridging the right by the Fourteenth Amendment.

It is noticed that the First Amendment in securing freedom of speech did not undertake to *give* that right to the people. It recognized the right named as something known, understood and *existing* at the time. The amendment forbids any law of Congress that shall abridge the right. The 1st and 14th amendments therefore sought to protect and perpetuate the right. The framers intended that it shall remain inviolate. The guarantee of freedom of speech is not mere declaration of policy of the state to be changed with every party in power but it limits legislative and executive action.

The Federal Constitution as originally drafted contained no guaranty of the fundamental freedom of speech.

When the Constitution as proposed was submitted to the various states for ratification the citizens showed much dissatisfaction and in the various state conventions the failure of the writers of the document submitted to provide for a guarantee of free speech, free press and freedom of worship was severely condemned. In fact some states refused to adopt the constitution until given definite assurance that a guarantee would be included in the document. The states that did not have the guarantee in their own constitutions immediately drafted and adopted the same for their own compact. The protest was so great that when Congress met for its first session immediately the Bill of Rights to the Federal Constitution was proposed for adoption and became a part of the Constitution of the United States on December 15, 1791.

This court has recently held that it was the intention of the writers of the Bill of Rights to declare that freedom of speech in the United States was much greater and broader than that enjoyed in Great Britain, and to allow the broadest scope that could be countenanced in an orderly society. *Bridges v. California*, 314 U. S. 52.

Throughout history the American people have felt perfectly free to criticize their leaders and the government whenever, and to whatever extent, they have felt they had just ground for finding fault. History has proved that this immemorial right of dissident Americans to air their real or supposed grievances has never yet kept them from being loyal and faithful citizens of the republic. There were severe critics among General Washington's followers, both before and after he became president, but they followed him none the less faithfully, even though exercising their rights of criticism.

It was then recognized and has ever since been recognized that the sovereign power of the republic at all times remained with *the people*. They are the fountain of all law and authority. The delegated authority of the state and



national governments is limited by their respective constitutions. The people being entirely sovereign are not dependent upon the state to grant, allow or suffer the exercise of freedom of speech guaranteed by the constitution and which existed prior to the adoption of the constitution and which right the people of the United States have never surrendered to either state or national governments. This right was equally granted to and held by the minorities as well as the majority party or the party in power.

In *McCulloch v. Maryland*, 4 Wheat. 316, Mr. Chief Justice Marshall said: "The government of the Union [state and federal], then (whatever may be the influence of this fact on the case), is emphatically and truly a government of the people. In form and in substance it emanates from them, its powers are granted by them, and are to be exercised directly on them, and for their benefit."

It is therefore among the fundamental principles of the government that the people frame the constitutions of the states and national government. By the same token they reserve to themselves the power to amend it from time to time, as the public sentiment may change. Section 6 of Article 3 of the Mississippi Constitution provides: "The people of this state have the inherent, sole, and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they deem it necessary to their safety and happiness; provided such change be not repugnant to the constitution of the United States."

Since it is plain that the people can change the form of government it is also manifest that no law which directly or indirectly burdens, abridges or curtails the exercise of free speech in the criticism of government short of open violence can be punished by law.

During the administration of President Adams, when the fabric of government was still new and untried the Sedition Law was passed by Congress. Then many men

seemed to think that the breadth of heated party discussions and criticisms of government might tumble the administration about their heads. The law\* made it a crime, punishable with fine and imprisonment, for any person to conspire together or counsel, advise, or attempt to procure insurrection, unlawful assembly, or write any false and malicious writings against the government of the United States, or either house of Congress, or the President, with intent to defame them, etc., or to stir up sedition, or to excite any unlawful combination for opposing or resisting any law, or encourage, or abet any hostile designs of foreign nations against the United States. Prosecutions were had under this law but the effect was to excite a violent public clamor throughout the country. They were held up to the people as attempts to stifle constitutional discussion, and to prolong the office of the party in power, by holding the threat of punishment over the heads of those who would vigorously assail its conduct, measures, and purposes. The public opposition was great and the law had a direct tendency to produce the very state of things it sought to repress; the prosecutions under it were instrumental, among other things, in the final overthrow and destruction of the party adopting it. The law was promptly repealed with the change of party in power and was never re-enacted thereafter.\*\*

This law was enforced with great severity, partiality and dishonesty. This law and its enforcement led to the impeachment of one of the federal judges but not his conviction. The defeat and extinction of the Federalist party resulted from it.

Judge Cooley in his *Constitutional Limitations* (8th Ed.) describing the effect of these prosecutions says: "The dangerous character of such prosecutions would be more glaring if aimed at those classes who, not being admitted to a share in the government, attacked the constitution in

\*Act of July 14, 1798.

\*\*Wharton's State Trials.

the point which excluded them. Sharp criticism, ridicule, and the exhibition of such feeling as a sense of injustice engenders, are to be expected from any discussion in these cases; but when the very classes who have established the exclusion as proper and reasonable are to try as judges and jurors the assaults made upon it, they will be very likely to enter upon the examination with a preconceived notion that such assaults upon their reasonable regulations must necessarily be unreasonable. If any such principle of repression should ever be recognized in the common law of America, it might reasonably be anticipated that in times of high party excitement it would lead to prosecutions by the party in power, to bolster up wrongs and sustain abuses and oppressions by crushing adverse criticism and discussion. The evil, indeed, could not be of long continuance; for, judging from experience, the reaction would be speedy, thorough, and effectual; but it would be no less serious evil while it lasted, the direct tendency of which would be to excite discontent and to breed a rebellious spirit. Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness. They must be left at liberty to speak with freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all the proper bounds of moderation, the consolation must be, that the evil likely to spring from the violent discussion will probably be less, and its correction by public sentiment more speedy, than if the terrors of the law were brought to bear to prevent discussion." [p. 901]

## B

**Existence of state of war does not suspend, restrict or narrow the guarantees of freedom of speech contained in the First Amendment.**

There is a widespread tendency to regard civil liberties, freedoms of speech, press and worship, in times of war as a dispensable and harmful luxury. This popular feeling finds no support in the law or constitution and probably arises from the fact that so many hundreds of persons were prosecuted for utterance of speech and circulation of literature during the first World War, which prosecutions came very near destroying the Bill of Rights. The theory of putting away civil liberties in "storage" until the end of the war and then extracting them after the "emergency" is based on several fallacies. If there has ever been a time in history when it is of supreme importance for democratic countries to maintain those two foundation stones of free society, political and civil liberty, that time is now. The nation could win the war militarily and yet lose it in a more permanent sense if the cost of victory is the surrender of the freedoms for which the nation claims to be fighting. Some Americans who are sincere liberals in times of peace lose their balance and perspective in time of war. They are so obsessed with the *scare-crow* of sedition that they quickly impute unworthy and criminal motives to those who disagree with them about proper methods of prosecuting the war and the political and economic objectives of the government. In this they lose sight completely of the long-range importance of maintaining the maximum degree of freedom of expression, if only as an antidote to the extremely powerful regimenting tendencies of the war itself. The rapidity with which events are sweeping the nation toward unknown forms of organization, national and international, provides one of the strongest arguments for resolutely maintaining,

whatever may be the external stress, those two most valuable elements in the heritage of a free people.

When "the state" becomes concerned over what seems to be unwise or injurious exercise of the right of free speech it is worth while to look back to the Civil War and recall how much expression of opposition sentiment was tolerated and proved compatible with the prosecution of the conflict to a successful end. Regardless of how grave some aspects of the military situation have been or now are, no one with a reasonable sense of judgment, vision, mercy and logic could regard it as comparable with the permanent crisis of 1861-1865, when Washington, D. C., was never far from the line of the battle front. The places where severe emergency measures were applied by the military authorities were in regions where there was actual or incipient civil strife and in combat areas. At the Democratic Convention during that war men used language about Lincoln which exceeded in violence anything found in the World War I Espionage cases. He was referred to by one speaker as an old monster who wanted more victims for his slaughter pens. Although this was not calculated to encourage recruiting and was made publicly there is no record that any prosecution was instituted against the vehement orator. In *Ex parte Milligan*, 2 Wall. 2, 120, Mr. Justice Davis said: "Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world has taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious conse-

quences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

In the *war between the states* freedom of press and of speech in the *North* was only disturbed three times and this by the military in combat zones, which was overruled by President Lincoln in two instances and once by this court.

In the Confederacy during the *civil war* the proceedings of the Congress were secret, and the press was held under military administration. These contrasting methods were as important in bringing about the ensuing result as the actions of the armies in the field.

Moreover, it should be noted that repressive legislative measures against the people's liberties have very little to do with maintenance of national morale. There were many such measures in France and many more arrests in France than in England after the beginning of hostilities. But when the test came France fell and England stood. The application of such repressive measures has no direct or indirect relation to the prosecution of military activities, but hamper it by causing national disunity of the peoples on the home front. The present day attitude toward suspension of civil liberties during war time is well expressed in *Wilson v. Russell*, 146 Fla. 539, 1 So. 2d 569, thus:

"These several arguments offered in behalf of the challenged ordinances are weighty and if presented to a legislative body could not only be influential but convincing, or if made on the hustings, would be approved and applauded by the people, but a court in the discharge of duty under our system is required to be oblivious to public clamor, partisan demands, notoriety, or personal popularity and to interpret the law fearlessly and impartially so as to promote justice, inspire confidence and serve the public welfare."

Judge Alexander said: "I see no reason, however, to justify a sacrifice of the freedom of speech by war when war is itself justified as a price for its maintenance. . . . It



may be that often *inter arma silent leges*, but courts have never recognized that in time of war the citizen must remain silent nor conscience inarticulate." R. 171-172.

"War is an emergency chiefly because our liberties are at stake. There is neither logic nor law to support the view that these liberties must be surrendered in order to be saved." (R. 173) "War does not restrict fundamental freedoms but rather enlarges the legislative field by bringing into play new laws designed to preserve the integrity of the war effort and to protect the functioning of our army and navy. But in the end the principle remains the same. Mere opinions even though beneath contempt are nevertheless above the law." R. 174-175.

The Office of War Information, Washington, D. C., in its pamphlet "The United Nations fight for the FOUR FREEDOMS" is deserving of quotation here. The pamphlet begins with a quotation from Franklin D. Roosevelt: "The four freedoms of common humanity are as much elements of man's needs as air and sunlight, bread and salt. Deprive him of all these freedoms and he dies—deprive him of a part of them and a part of him withers. Give them to him in full and abundant measure and he will cross the threshold of a new age, the greatest age of man." Under "Freedom of Speech" the pamphlet states: "To live free a man must speak openly; gag him and he becomes either servile or full of cankers. Free government is then the most realistic kind of government, for it not only assumes that a man has something on his mind, but concedes his right to say it. It permits him to talk—not without fear of contradiction, but without fear of punishment.

"There can be no people's rule unless there is talk. Men, it turns out, breathe through their minds as well as through their lungs, and there must be a circulation of ideas as well as of air. Since nothing is likely to be more distasteful to a man than the opinion of someone who disagrees with him, it does the race credit that it has so stubbornly defended



the principle of free speech. But if a man knows anything at all, he knows that that principle is fundamental in self-government, the whole purpose of which is to reflect and affirm the will of the people.

"In America, free speech and a free press were the first things the minds of the people turned to after the fashioning of the Constitution. . . .

"Talk founded the Union, nurtured it, and preserved it. The dissenter, the disbeliever, the crack-pot, the reformer, those who would pull down as well as build up—all are free to have their say.

"Talk is our daily fare—the white-bosomed lecturer regaling the Tuesday Ladies' Club, the prisoner at the bar testifying in his own behalf, the editorial writer complaining of civic abuses, the actor declaiming behind the footlights, the movie star speaking on the screen, the librarian dispensing the accumulated talk of ages, the professor holding forth to his students, the debating society, the meeting of the aldermen, the minister in the pulpit, the traveler in the smoking car, the soap-box orator with his flag and his bundle of epigrams, the opinions of the solemn magistrate and the opinions of the animated mouse—words, ideas, in a never-ending stream, from the enduring wisdom of the great and the good to the puniest thought troubling the feeblest brain. All are listened to, all add up to something and we call it the rule of the people, the people who are free to say the words.

"The United States fights to preserve this heritage, which is the very essence of the Four Freedoms. How, unless there is freedom of speech, can freedom of religion or freedom from want or freedom from fear be realized? The enemies of all liberty flourish and grow strong in the dark of enforced silence."

Mr. Joseph F. Guffey, Senator from Pennsylvania, in his address over the Mutual Broadcasting System 10:00 p. m. Sunday, December 14, 1941, among other things said:

"Traditionally the American people have recognized a distinction between the liberties they enjoy in time of peace and the restrictions they must necessarily expect in time of war.

"This does not mean that the Bill of Rights is to be suspended for the duration of the emergency. Nor does it mean, as some are inclined to assert, that our liberties are only 'qualified' in any event. They are as real today as they have ever been in our history. It is important that we keep them that way. Should we deny their essential validity now, we would deny the very Democracy we are fighting to preserve, for they are in a real sense the foundation of our Democracy. . . .

"To those who incline to the belief that the Bill of Rights should be suspended in wartime, I say that we should all remember that without the Bill of Rights we should not have had a Constitution at all. Our forebears made it a condition precedent to ratification of the Constitution as it was originally proposed. . . .

"In many European nations which have fallen under Axis domination during the past two years severe repressive measures had been taken long before the conquest, in an attempt to stop the tide of propaganda which was part of the 'softening up' process preliminary to armed invasion. These measures, drastic as many of them were, failed to halt the Fifth Column. In one sense they were an attempt to combat one dictatorship with another, with the inevitable result that the people, seeing their liberties disappear by governmental edict, saw little reason to fight for a freedom which was already gone. In this Nation our defense against the Fifth Column has not been legislative.

" . . . In fact, I conceive the real danger to our Bill of Rights in war time to be not legislative enactments but rather the misdirected patriotism of individuals and groups who may be inclined to brook no criticism of our endeavors. In the prosecution of this war we enjoy an advantage which

no dictator nation can match, the advantage of expression of the public will, of criticism where it is needed . . .

"I say that now, in the midst of war, is the time for us to proclaim our Bill of Rights as the great charter of freedom which we are fighting to preserve. Let it stand forth as a shining light to those nations engulfed in darkness, as a beacon in the storm, so that all who labor beneath the yoke of dictatorship may look up and take heart."

Francis Biddle, Attorney General of the United States has declared the policy of the Department of Justice thus: "It seems to me that the most important job an Attorney General can do in a time of emergency is to protect civil liberties.

"In tense times such as these a strange psychology grips us. We are oppressed and fearful and apprehensive. If we can't get at the immediate cause of our difficulties we are likely to vent our dammed-up energy on a scapegoat. That scapegoat may be some one whose views are contrary to our own, it may be some one who speaks with a foreign accent, or it may be a labor union, which stands up for what it believes to be its rights. . . .

"In so far as I can by the use of the authority and the influence of my office, I intend to see that civil liberties in this country are protected; that we do not again fall into the disgraceful hysteria of witch hunts, strikebreakings and minority persecutions which were such a dark chapter in our record of the last World War." (*The New York Times Magazine*, September 21, 1941.)

Mr. Justice Murphy, when Attorney General, on October 13, 1939, in his public address entitled "The Test of Patriotism" among other things said: "But in our zeal to protect ourselves from internal aggression, we must be on guard that we ourselves are not guilty of aggression against the civil liberties of our citizens. We must not fall victim to the infection of despotism that in recent years has been

sweeping the world. For if we suppress civil liberty, we suppress democracy itself."

It is plain that the United States Government through the Department of Justice is doing its utmost to keep the enforcement of the war laws within their proper orbit and is allowing the greatest liberality to the exercise by all of civil liberties and not to repeat the tragedy of 1917-1918. For detailed information of hysteria prosecutions during the last war see "Free Speech in the United States" (Chaffee) where it is said that "to advocate heavier taxation instead of bond issues; to state that conscription was unconstitutional, although the Supreme Court had not yet held it valid; to say that sinking of merchant vessels was legal; to urge that a referendum should have preceded our declaration of war; to say that war was contrary to the teachings of Christ", was found to be criminal by judges and juries.

The Attorney General of the United States has requested the various states to leave the matter of espionage, sedition, etc., prosecutions to be handled by the Department of Justice so as to insure uniformity of treatment. In most states hysteria has disappeared by following this advice. At Indianapolis, Indiana, on September 30, 1941, before the National Association of Attorneys General, Mr. Biddle said: "Registration control of aliens was, by unanimous consent, left with the Federal government. Matters of espionage, by common consent, have been left with the Federal government, where it belongs."

The national government is responsible for the prosecution of the war effort and therefore administration of any penal laws which are war laws should be confined to the policy of the Department of Justice, where there is a uniform declaration of policy. Divergent policies of the various states on such matters can well impede the war effort by creating disunity through suppression of the Bill of Rights. If the various states cannot willingly conform to the policies on the same subject fixed by the Department of Justice,

then it is the *duty of this court* on appeals of this sort to take *control* over the *state war legislation* subject matter so as to make it uniform. The reason why national interest justifies uniform control over the subject matter of war legislation is not hard to discern. If the legislation is justified only by the war created by the federal government by declaration of war, then the policy of the state should conform to the policy of the federal government. It is plain that when local interests are involved that the local law-making and law-enforcing bodies will deal with decent respect for the interest of those affected. But when non-local or minority interests are involved the temptation is to promote the local welfare at the expense of the minorities. In that event there is the inevitable tendency toward disunity. This doctrine has been applied in the field of business regulation; the commerce clause and intergovernmental tax immunity have expounded it. (*McCulloch v. Maryland*, 4 Wheat. 316, 435-436; *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 184; *Helvering v. Gerhardt*, 304 U. S. 405, 412, 416) Mr. Louis Lusky in his article "Minority Rights and the Public Interest"\* says: "Our remarkably unanimous support of the present war is based in large degree on the general feeling that we are fighting to preserve the principle of 'free' government. The importance of this feeling, which is basic to our morale, can hardly be overestimated. Under such circumstances there is a danger in anything which creates doubts as to whether our own government is essentially different from those against which we are fighting. . . .

"The justification for Federal intervention in the field is therefore clear. There is a national interest not only in preserving a form of government in which men can control their own destinies, but in enabling the common man to see its advantages and know its feasibility. It is an interest in quelling doubts as to the practical efficacy of our system

\* Yale Law Journal, Volume 52, Number 1, December 1942.

to accomplish essential justice. It is an interest in preventing deviations from our national ideal, even in local government, because deviations create such doubts. In short, it is an interest in making a belief in our system a part of the American creed."

William H. Chamberlin\* says:

"The fight for civil liberties must be waged continuously, courageously, and consistently or it will be lost. For the capacity to appreciate, even to exercise these liberties might easily be atrophied in the event of a long suspension under the double pressure of bureaucratic encroachment and mass intolerance. What is even more appalling in the totalitarian society than the absence of liberty is the ever-growing lack of consciousness that there was such a thing as liberty to lose."

"If, in one way or another, we should lose these liberties—the right to speak and write freely and critically, the right to organize politically and industrially without state control, the right to speedy and impartial justice—then our way of life would have been defeated and we should have fallen before the totalitarian wave, even though our banners might some day wave triumphantly in Tokyo and Berlin."

### C

The publications in question contained only statements made by Jehovah's witnesses as an official explanation of their attitude toward the national flag and governments of this world in defense of the charges made against them and misunderstandings resulting from false reports concerning their loyalty.

Appellant was not indicted, prosecuted nor convicted because he "advocated the cause of the enemies". The evi-

\*"Why Civil Liberties Now," *Harpers Magazine*, October 1942.



dence wholly fails to show that he advocated the cause of the enemies in the war; therefore this court does not have to determine whether or not on its face and as applied that part of the statute violates the constitution. Appellant was convicted because the language used is alleged to be "designed and calculated to encourage" "disloyalty to the government" and "reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government".

It should be kept in mind what the court must here consider is this law within the police war powers of the state broadened by the state of war. The court below admits that the law is unconstitutional as peace-time legislation but sustains it as a war measure. The problem for this court to decide is the particular parts of the statute under which the appellant was prosecuted within the "war powers" of the state of Mississippi. We say that the statute in these respects and provisions is invalid because "loyalty" and "saluting a flag" are not peculiarly associated with the war effort, but are peace-time elements as well. Furthermore since the court below has construed the statute broadly so as to cover the entire field of loyalty and not limit it to the war effort it is void.

Mr. Chief Justice Smith of the court below, dissenting, said: "This power exists only when the nation is at war and is to enact legislation in aid of the prosecution of the war or to prevent the obstruction of its successful prosecution. Article I, Section 8, Clause 11, Section 10 of our National Constitution. *Gilbert v. Minn.*, 245 U. S. 325. . . . The disloyalty to the State or Nation condemned in this statute is not limited therein to such as may adversely affect the prosecution of this war but covers all such disloyalty whether it affects the prosecution of the war or not, and therefore is in excess of the State's war power." R. 176-177.

Judge Alexander of the court below, dissenting, says



that the statute is limited in the same manner as is the Espionage Act. He adopts the language of Bishop's Criminal Law (9th Ed.), Vol. 1, p. 326, where it is stated: "The purpose of the espionage act passed by Congress on June 15th, 1917, was not to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk but only falsehoods wilfully put forward as true with intent to interfere with army and navy operations. Remote and secondary results not intended by the defendant, arising from a fair and truthful discussion of matters of public concern do not fall within its purview." R. 172.

There is no law requiring the salute to the flag in any fashion in the state. The statute allowing the salute ceremony in the schools is peace-time legislation regulating the conduct of the schools and does not affect the war efforts or men in the army or persons subject to the Selective Training and Service Act. There is no statute which says that the refusal to salute the flag is an act of disrespect or disloyalty. There is no showing that refusal to salute for reasons of conscience affects the war effort directly or indirectly. There is no finding that the "salute" of the flag will contribute to the success of the war effort.

A rule of conduct which compels individuals to manifest beliefs and emotions in a specified manner, as the compulsory salute, is an attempt to control and direct the inner thoughts of a man which cannot be done by law. Loyalty cannot be made by law. Loyalty cannot be created by legislation. There are many different ways of showing loyalty. One may prefer to participate in a ceremony, while another may prefer to show his loyalty in another way, such as obeying the laws of the land and honestly performing his duties to God and State. Ceremonies are necessarily an individual thing. What may please the mind and conscience of one may not please that of another. The ceremony of one religion may be abhorrent to that of another religion and no one would think for a moment that the ceremony of one

could be forced on another by law. The same principle applies to loyalty ceremonies.

It is true that in the Army and Navy strict regimentation is necessary and certain rules and regulations can be prescribed by the commanders of the military forces prescribing the conduct of the members of the armed forces which could not be constitutionally prescribed against the civilian population. There may be said to be a plain and necessary need for strict discipline and regimentation in the military forces so as to have an effective army and navy. Such justifications of regimenting those in the armed forces does not allow similar measures against the civilian population.

Loyalty is necessarily a general term of varying definitions. It is a condition which applies to different facts and circumstances. It is not a proper subject of legislation because loyalty must come from within and cannot be proved and established by outward ceremonies which have no direct relation to the state.

In the court below Judge Alexander said: "It will be found that the cases invoked to sustain the controlling view on this point deal chiefly with acts or advocacy which violates existing law, or which undermines the discipline or efficacy of our armed forces or the functioning of our military machine". R. 172.

The limitation upon the state in enactment of laws abridging freedom of speech is well stated by Mr. Justice Roberts in *Herndon v. Lowry*, 301 U. S. 242, thus: "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution."

To say that one who does not agree one hundred per cent with the political, domestic and war policies of the nation is disloyal and not entitled to voice his opinions is tantamount to destroying the heritage of the American citizen and right of all to advocate for a change in the government or abolition of the Constitution by peaceful and lawful means. It at once means the end of liberty of speech.

It is apparent that as to the provisions relating to the "attitude of stubborn refusal to salute the flag" and "disloyalty" the statute is void because there is no rational connection between the safety of the state in times of war and the means employed. See Freund, *Police Power*, p. 497; also at page 133, where it is said:

"The questions which present themselves in the examination of a safety or health measure are: does a danger exist? is it of sufficient magnitude? does it concern the public? does the proposed measure tend to remove it? is the restraint or requirement in proportion to the danger? does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?" [section 143]

The Mississippi Supreme Court did not give consideration to any of these requirements and applied the presumption that the enactment is valid and refused to go behind it to determine its invalidity. The court says: "The legislature knew the local conditions—that we have two races about equal in numbers in this state, and that under the stress of the times agitation and subversive influence should not be abroad among the people. The legislature is the judge of conditions justifying such legislation unless it is clearly apparent to the Court that the assumption is unfounded." (R. 155) It is manifest that the fact that there are two races in Mississippi about equally divided has no more connection and weight than the fact that there are several scores of nationalities living together in peace in New York City. It is noticed that the Supreme Court of Mississippi fails to

apply the rule applied by this court that where the freedom guaranteed by the First Amendment is involved there is a presumption of invalidity, or at least the burden is upon the advocates of the measure to prove its constitutionality as applied which has not been discharged by the state here. We have more to say of this later when we reach the discussion as to extent of inquiry to be made by this court concerning the problems here presented.

We submit therefore that since it is manifest that any benefits flowing from the questioned provisions of the statute are only indirect in relation to the war effort and the injuries flowing from the suppression and repression of freedom of speech by an application of the statute are so great and broadly destructive that any benefit, which is only imaginary and doubtful, flowing from the enforcement of the statute is counterbalanced by the social advantages of free speech and open criticism. These considerations require that the legislation be declared unconstitutional.

#### D

As construed by the highest court of Mississippi the statute is void because it does not require a showing and finding that the language presents a clear and present danger to the war effort, protection of which is the claimed purpose of the statute.

As hereinbefore discussed it is manifest that the writers of the Constitution intended to give a higher degree of "free speech" than was enjoyed by the people in Great Britain at the time of the adoption of the First Amendment. The ancient "reasonable tendency", "designed and calculated" and other Eighteenth Century doctrines applied under the old common law which permitted indictments and prosecutions for "libels against the government" were not shaken off immediately with the adoption of the amendment but clung on as barnacles to the "constitutional ship" until

definitely rejected by this court in *Schenck v. United States*, 249 U. S. 47, 52, where Mr. Justice Holmes said: "The question in every case is whether words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

In the Supreme Court of Mississippi it was clearly argued that this requirement of "clear and present danger" must be read into the statute in order to meet the requirements of the decisions of this court. This contention was definitely rejected by the court below. The court said: "The Mississippi statute does not do that. [Require clear and present danger.] That was not necessary to its validity." R. 159.

In the circumstances the statute must be judged on its face. With reference to the parts of the statute under which appellant was convicted, 'disloyalty' and 'refusal to salute flag' provisions, all that is required for a conviction is "designed and calculated" and "which reasonably tends". Both of these terms are terms from the old common law days prior to the American Revolution and the adoption of the First Amendment. In *Bridges v. California*, 314 U. S. 252, in discussing the question, it was said: "Nevertheless, the 'clear and present danger' language of the *Schenck* case has afforded practical guidance in a great variety of cases in which the scope of constitutional protections of freedom of expression was in issue. It has been utilized by either a majority or minority of this Court in passing upon the constitutionality of convictions under espionage acts, *Schenck v. United States*, supra, *Abrams v. United States*, 250 U. S. 616; under a criminal syndicalism act, *Whitney v. California*, supra; under an 'anti-insurrection' act, *Herndon v. Lowy*, supra; and for breach of the peace at common law, *Cantwell v. Connecticut*, supra. And very recently we have also suggested that 'clear and present danger' is an appropriate guide in determining the constitutionality of restric-

tions upon expression where the substantive evil sought to be prevented by the restriction is 'destruction of life or property, or invasion of the right of privacy.' *Thornhill v. Alabama*, 310 U. S. 88, 105.

"Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial', Brandeis, J., concurring in *Whitney v. California*, *supra*, 374; it must be 'serious', *id.* 376. And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression. *Schneider v. State*, 308 U. S. 141, 161.

"What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furthestmost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak equivocally. It prohibits 'any law abridging the freedom of speech or of the press'. It must be taken as a command of the broadest scope that explicit language, read into the context of a liberty-loving society, will allow. . . .

"In accordance with what we have said on the 'clear and present danger' cases, neither 'inherent tendency' nor 'reasonable tendency' is enough to justify a restriction of free expression. But even if they were appropriate measures, we should find exaggeration in the use of those phrases to describe the facts here."

If this court were to approve the *reasonable tendency* doctrine as applied to this statute, great injustice and further abridgment of speech would result. Such a doctrine permits the state to go outside its proper field of acts,



present or probable, into the field of ideas and opinion, and possible consequences and imagined results based upon contingencies which may never happen, as a justification for the condemnation of speech. It would allow the condemnation of speech by judge or jury concerning a doctrine which they disliked because they thought it is likely to cause harm some day in the future. Thus they justify their wrongful acts in pyramiding one fallacious argument upon sophistry and upon imagined dangers and immediately conclude that it had better be nipped in the bud.

The clear and present danger rule permits the doctrine, dogma, creed, theory and principle to be proved or disproved by argument in the course of events. It avoids the risk of suppressing disagreeable truths so long as there is no imminent danger of the unlawful acts which can be prohibited by statute. By applying and maintaining this principle only can the nation survive as a democracy with freedom of speech for all. The very best way to increase discontent among the people—disorder, distrust and hatred—is to convict and impose severe sentences upon innocent followers of Jesus Christ under the general statute of Mississippi. The clash of ideas is to be welcomed, not feared, even if it casually involves the permission of one to speak matters exceedingly distasteful to the vast majority of the people. Freedom of thought and speech does not mean freedom for those who agree with us but freedom for those whose message we despise and thoroughly disagree with.

In *Thornhill v. Alabama*, 310 U. S. 88, Mr. Justice Murphy held for this court that a statute of this sort must be judged on its face. There he said: "The section in question must be judged upon its face.

"The finding against petitioner was a general one. It did not specify the testimony upon which it rested. The charges were framed in the words of the statute and so must be given a like construction. The courts below expressed no intention of narrowing the construction put upon the statute



by prior State decisions. In these circumstances, there is no occasion to go behind the face of the statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges." "Conviction upon a charge not made would be a sheer denial of due process." *De Jonge v. Oregon*, 299 U. S. 353, 362; *Stromberg v. California*, 283 U. S. 359, 367-368.

The dangers to constitutional liberties by applying the *reasonable tendency* rule instead of the *clear and present danger* is further discussed by this court in the case of *Herndon v. Lowry*, *supra*.

We submit, therefore, that the statute on its face, by its terms and as construed by the highest court of Mississippi permits unconstitutional abridgments of freedom of speech because not requiring the application of the clear and present danger test.

### E

There is no evidence that the language complained of constitutes a clear and present danger that any of the evils aimed against by the statute will result, and the undisputed evidence further shows that there was no reasonable tendency of appellant's conduct to cause the results prohibited by the statute.

It may be argued by some that it is not the province of this court to inquire into the evidence. This argument is answered at the threshold to our discussion under this point. When it is argued that the evidence shows that a substantial federal question is involved and that a right secured by the constitution has been denied appellant it is the duty of the court to inquire into the evidence, especially when the question of law is mixed with a question of fact. Reference is made to *Sterling v. Constantin*, 287 U. S. 378, 398, where this court said: "When there is a substantial

showing that the exertion of state power has overridden private rights secured by that constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against individuals charged with the transgression. . . . Accordingly, it has been decided in a great variety of circumstances that when questions of law and fact are so intermingled as to make it necessary, in order to pass upon the federal question, the court may, and should, analyze the facts. Even when the case comes to this court from the state court this duty must be performed as a necessary incident to a decision upon the claim of denial of federal right." See also *Fiske v. Kansas*, 274 U. S. 380, 385, 386.

The statement of facts pages 7 to 13, inclusive, supra, is adopted by reference as a part of this argument.

The circumstances surrounding the occasions that these statements were made should be considered. The motives, interests and declared intentions of the state's witnesses should not be ignored in determining whether there existed a clear and present danger. These witnesses were not acting in good faith with appellant when he visited at their home. They acted as spies and informants for the American Legion and the prosecuting attorney, who had advised these women that appellant and his wife were criminals engaged in subversive activities in the community. They were not interested in what appellant was preaching except to draw something out of him so that he might be trapped for the District Attorney. As a matter of fact the taking of the literature by each woman was not that they might read it and learn what was taught by appellant but that they might turn it over to the prosecuting attorney and Legionnaires as evidence to be used in this prosecution. These circumstances recall forcefully to mind the account recorded in Luke, chapter 20, verses 19-23, concerning Jesus thus: "And the chief priests and the scribes the same hour sought to lay hands on him; and they feared the people: for they

perceived that he had spoken this parable against them. And they watched him, and sent forth spies, which should feign themselves just men, that they might take hold of his words, that so they might deliver him unto the power and authority of the governor. And they asked him, saying, Master, we know that thou sayest and teachest rightly, neither acceptest thou the person of any, but teachest the way of God truly: Is it lawful for us to give tribute unto Caesar, or no? But he perceived their craftiness, and said unto them, Why tempt ye me?"

It is noticeable that none of the women who testified against appellant could remember any other specific statement as made by appellant except the precise words charged in the indictment, although the appellant talked to them for more than an hour and a half on Bible prophecies. Since the women could not remember clearly the other parts of the conversation, the only way the court can consider the entire context of the conversation to determine the true circumstances under which the objectionable words were claimed to have been spoken, is to consider the testimony of appellant. With respect to the parts not touched upon by the women the testimony of the appellant must be taken as true because not contradicted.

The complaining witnesses feigned interest in the comforting message of the scriptures with reference to the hope of the dead, their sons who had lost their lives at Pearl Harbor. They were zealous in an effort to aid the state in tracking down fifth columnists, subverters, saboteurs, and other enemies of the nation. Appellant had been identified to them as a 'foe' when they received him into their homes. Their imagination and zeal greatly fired by representations made by the prosecuting attorney intensified their reaction against appellant. The things they were looking for caused them to hang onto any word or statement which could be misconstrued in favor of the prosecution and manifestly even led them to false statement.

No person would have the hardihood and audacity to contend that the appellant visited in the home of these women to create disloyalty or to subvert the war effort. He was there for the purpose of preaching God's kingdom as the only hope for the suffering of humanity. Since two of the women had lost their loved ones he showed the hope that the Scriptures held out for the women actually to see their loved ones resurrected and brought back to live upon the earth under God's government of righteousness.

In the course of the conversation appellant turned to an explanation of the oppression and hardships upon the people of the world at the present time. In showing that these conditions were foretold to come to pass in these modern days as a circumstance and proof of the need and nearness of such kingdom, he referred to the prophetic book of Revelation, the seventeenth chapter. He went into a detailed explanation of the "scarlet-coloured beast, full of names of blasphemy, having seven heads and ten horns" with its female rider as picturing Totalitarian Rule. Appellant said that he mentioned that Hitler was the leading example and proponent of totalitarianism in the earth. From the Scriptures it was pointed out by appellant to the women that the prophecies were being rapidly fulfilled by the coming to pass of present-day world events known to all. A more detailed consideration of the prophecy of Revelation, 17th chapter, is found in the booklet *Peace—Can It Last?* which is printed in the record in *Jamison v. Texas*, No. 558 October Term 1942 (decided March 8, 1943, by this Court), to which reference is here made. This booklet shows that there is nothing in the doctrines of the Bible as revealed in Revelation 17th chapter which even remotely affects the war effort. It clearly pictures postwar conditions under the *New Order* which is proposed for mankind.

It is then very plain that there is nothing said with the intention of frustrating the war effort of the nation or which would create disloyalty to the war effort. Appellant

emphatically denied making the statement that it was wrong for the President of the United States to send an army overseas to fight. The statements at the most were only expression of opinion and did not advocate disloyalty to the government or directly affect the war effort. Such statements are not nearly as disloyal and subversive as some of the editorials and news comments of the leading and largest newspapers of the nation nor the public expressions of certain congressmen and senators on the same subject.

While there was little, if any, "second front" agitation at the time of the statements it is a thing of common knowledge that for months before the second front was opened in Africa there was a constant battle of words in the public press, in news items, statements of public officials, swivel-chair "newspaper typewriter" generals, editors and others as to advisability of opening a second front and whether or not it was or was not a sound move. Many conflicting opinions were expressed. Many critical opinions of the *second front* were voiced. The nation is at war, says the controlling opinion below! But does this mean that in times of war the conduct of the commander in chief, the generals, and other officials becomes immune from criticism and comment, except favorable comment, as it is today in Germany, Italy and such places? By declaring war on the Axis powers the United States did not surrender the "four freedoms" which it claims to be fighting to preserve. It has historically been the prerogative of the American people to criticize and advocate peaceably for a change in policies, even in times of war. If this right did not exist and could not be practiced, the smoldering discontent would explode into violence and revolution. Any well-balanced and well-informed person knows that public discussion of policies is a public necessity. That free speech is not exercised for the sole benefit of the speaker but that the public have an equal right to hear, which is also protected by the Constitution. Throughout

history the American people have felt perfectly free to criticize their leaders whenever, and to whatever extent, they have felt they had just ground for finding and pointing out faults, *in the public interest*. This right and practice has not kept them from giving loyal and sacrificial service to the republic. There were grumblers among the most devoted of General Washington's followers, but they followed him none the less faithfully on that account. As it was then, so also it is now.

In connection with these statements above mentioned there should be considered, together with appellant's denial thereof, the record of appellant in times past. He volunteered during the first world war and was discharged after the war ended. He enlisted later and was in the army up to 1931, when he was honorably discharged. He testified positively that he was neither a conscientious objector nor a pacifist.

Appellant emphatically denies making any statement with reference to the flag. But assuming that he did make the statement, can it be said that such statement in any way affected either directly or indirectly, immediately or remotely, the war effort? None whatsoever. The flag is no more closely connected with the government in time of war than in time of peace. It is an emblem of the government and stands for freedom of speech, press and worship in times of peace as well as in times of war. The duty of the citizen to the flag does not change in times of war. It is the same at all times. The flag, therefore, has no direct connection with the war effort and the statements said to have been made by appellant on the flag cannot present a clear and present danger that the war effort could be affected in any degree.

Concerning all the oral statements alleged to have been made by appellant it should be remembered that the circumstances do not show any danger whatever. They were not made to men in the army. It is not shown that anyone



subject to the Selective Training and Service Act was present and heard any such words. Nor is it shown that the women carried the message on to others except the prosecuting attorney. These women heard it in *private* homes. The circumstance alone shows that there was no clear and present danger. All of the cases relied upon by the state are cases where statements were made in *public* places or in public speeches or in literature distributed to the public. Here there is no claim nor is there any evidence that the appellant was going from house to house making such statements. The unusual circumstances of these two women having lost sons at Pearl Harbor in the sneak attack there and the fact that the women were drawing the appellant out on such statements shows that they were limited to the particular circumstances. It seems plain that before such statements could be considered presenting a clear and present danger there should be some evidence, of which there is none in the record, that appellant was making the statements from house to house. In this regard the state wholly failed to establish a vital element in its proof.

To allow conviction based on statements made incidentally in private conversation of this sort opens wide the door to many innocent persons to be persecuted under a statute of this sort. A court should be reluctant to convict under a statute of this sort where oral words are involved unless it can be absolutely certain that there was an intent to violate the statute and that the actual words were uttered. The evidence should be examined with close scrutiny therefore to determine the fact. Under the statute and record in this case the conviction depends on the reaction, memory, prejudices, understanding and comprehension of witnesses for the state who admitted that they were moved by prejudice, jealousy and fear of prosecution themselves by the County Attorney for possession of the literature they had previously received from appellant's wife if they did not "come across" with the goods and aid in prosecuting the appellant.



No reasonable person can be convinced beyond a reasonable doubt that appellant intended to violate the statute or commit any of the evils prohibited by it.

Also in arriving at the conclusion that there is no evidence of clear and present danger the court should consider the admission of every person who heard the oral statements that they did not believe them, were not affected by them. Each woman testified that it did not affect her in any way, did not cause her to have less respect for the flag, did not cause her to have less allegiance to the government. That because of the conversation it caused her to have a higher regard, love and allegiance for the government. It seems plain therefore that as to the oral statements there is absolutely no evidence in proof of any danger whatever flowing from the words of the appellant.

It is manifest that the entire conversation was devoted to an explanation of the Scriptures as they relate to the postwar conditions. On this subject freedom of speech even in this time of war should be allowed in the widest possible manner. Is it necessary that the liberty of speech in the pulpit be curtailed and suppressed? Even in this time of war the Office of Civilian Defense and the Office of War Information are looking to the clergy to aid in discussing the peace aims of the nation. In *The Christian Century*, issue of January 20, 1943, page 79, under article entitled "The President Opens the Door", President Roosevelt is quoted as saying, "We are counting on the leadership of our clergymen to facilitate a program of discussion of the world beyond the war." It certainly is not intended that an ordained minister of Jehovah God should be restricted in describing such times from the standpoint of the Bible.

In arriving at the question of whether or not the matter of clear and present danger is presented in the evidence the court cannot consider the objectionable statements themselves but the court must consider the entire conversation or entire document from which the statements are

taken. Mr. Justice Brandeis in *Schaefer v. United States*, 251 U.S. 466, 482, said: "The nature and possible effect of a writing cannot be properly determined by culling here and there a sentence and presenting it separated from the context. In making such determination, it should be read as a whole." See also *United States v. One Book Entitled Ulysses*, 72 F. 2d 705; *United States v. Dennett*, 39 F. 2d 564; *Dupont Engineering Co. v. Nashville Banner Pub. Co.*, 13 F. 2d 186, 189; *Halsey v. New York Society*, 234 N. Y. 1, 4; *Moore v. Booth*, 216 Mich. 653.

With reference to the contents of the booklets there can be no question but that the evidence shows that they were distributed publicly and from house to house. The appellant admitted that on the witness stand, while denying the making of the oral statements. The question presented by the literature, therefore, is squarely whether or not such booklets, *considered as a whole* and not culling out parts, present a clear and present danger against the government's war effort and the evils which the statute is designed to prohibit.

Portion of the booklet *God and the State* is objected to. Considering it in its entirety it is plain that *the purpose* of the booklet is not to create an attitude of stubborn refusal to salute the flag but *explains the position* of Jehovah's witnesses with reference thereto. Its purpose is to make plain this attitude and stand of Jehovah's witnesses. It is devoted exclusively to an explanation of the responsibility of one in a covenant with Jehovah God *to do His will* as one of His witnesses. From cover to cover it is filled with scriptural quotations showing that Exodus 20:3-5 forbids a true Christian from saluting the flag of any nation. This conclusion is not the interpretation of any man but clearly appears to be the interpretation of Jehovah God. Scriptural instances recorded showing the stand taken by Jehovah's witnesses in ancient times when confronted with the request to bow down to the State, contrary to God's

Law, are given to show that God's law is Supreme and that conscience cannot be violated. The historical origin of the compulsory flag salute is given, showing conclusively that it is of Nazi origin and is used for the purpose of violating conscience. It is pointed out that any criminal or fifth columnist would salute the flag openly and publicly and then secretly work against the interests of the Government and everything that the flag stands for. The booklet then takes up a discussion of the *Gobitis* case from the time it originated in the trial court until it reached this court. The meaning of loyalty is explained and for the children at public school a substitute pledge is offered, showing the loyalty of Jehovah's witnesses.

Next a portion of the booklet *Comfort all that Mourn* is objected to. This booklet treats of the prophecy of Daniel, dictated more than two thousand years ago by Almighty God and written by His prophet Daniel, who stated that he did not understand what he had written and then in answer to his request for understanding Almighty God is recorded as saying: "Go thy way, Daniel; for the words are closed up and sealed till the time of the end." (Daniel 12:8-10) The booklet then points out that the "time of the end" is now here. The world torn by war, famine, pestilence and beset by all manner of wickedness and showing that all human remedies have failed is cited. The cause is placed on the fact that Satan, the Devil, and a host of wicked demons bear rule over the peoples of the earth. The righteous are identified by the scriptures and the facts. These many facts are cited together with other circumstances showing that the prophecy is in course of fulfillment. Daniel's mentioning the "king of the north" is held to picture that ruling power which is totalitarian and dictatorial nations of the earth represented in the Axis combine which seeks to rule the world and to re-establish the "Holy Roman Empire". The "king of the south" is identified as the world ruling power which rules and claims the right to rule the

nations of earth in the name of Democracy, the dominant elements of which are commerce, politics and religion. A consideration of the deadly fight mentioned in that prophecy is treated in detail showing that it matches specifically with the facts of the present world war between the *United Nations* and the *Axis Powers*. The "king of the north", Axis powers, is described, thus: "He shall go forth with great fury to destroy, and utterly to make away many . . . yet he shall come to his end, and none shall help him."—Daniel 11: 44, 45.

The obligation of Jehovah's witnesses as God's covenant people to preach the gospel is restated in the booklet showing that they cannot turn aside from that responsibility because of any earthly circumstance or conflict. That with reference to such conflict they remain entirely neutral, using all their time to "comfort all that mourn" with the preaching of the gospel. Among other things as message of comfort Daniel 2: 44 is quoted as proof positive that in this present day Almighty God shall set up his kingdom in the earth and that it shall never be destroyed. It is described as a Theocracy ruled from the top down by Jehovah God and Christ Jesus the invisible rulers. As visible earthly governors or princes of this kingdom of righteousness there will be resurrected and brought back to life on earth the faithful servants of Jehovah who lived prior to Christ Jesus and who 'were stoned, sawn asunder, were tempted and were slain with the sword' and who are otherwise described in Hebrews chapter 11.

Then is described in such booklet the everlasting blessings of peace, prosperity, happiness and life eternal on earth. Concerning this kingdom it is declared: "nation shall not lift up a sword against nation, neither shall they learn war any more." (Micah 4: 1-4) It is then pointed out that no nation formed by hand of man will bring these blessings and that the "end of the rule of the wicked totalitarian powers is at hand."

The booklet *Refugees* sets forth the facts telling why there are so many people fleeing from the homes and seeking refuge and security. It sets forth the facts showing that religion is distinguished from Christianity and does not offer a haven of rest and protection nor salvation to the refugees wandering aimlessly throughout the earth. From a scriptural standpoint the present world crisis is discussed, together with its effect upon the people. Then are discussed the religious doctrines of "hell-fire" and "purgatory", which find no support in the Bible. The truth about the dead is set forth; the doctrine of the resurrection and God's kingdom as the place of refuge for the refugees is described. It is then followed by an explanation of Jesus' parable of Lazarus and the rich man.

Not one word is written in the booklet about the flag or saluting the flag.

If these booklets can be said to violate the statutes because inciting disloyalty to the nation then the Holy Bible cannot be lawfully possessed or distributed in the State of Mississippi without distributor running risk of being interned in the penitentiary for the duration of the war.

They do not teach disloyalty or any other unlawful thing. They do not advance the political cause of any individual. They contain the same message taught by Christ Jesus when He was on earth and nothing else.

Among evils the State contends would clearly and immediately follow distribution of this literature is that the comforting message it has concerning the hope of the dead to be resurrected on earth to life everlasting in a kingdom where there will be no more wars or death subverts the war effort of the nation. That it is not good to teach such things to the people, especially to mothers who have lost their sons in battle.

The State also advances the astonishing doctrine, which is immediately picked up by the Supreme Court of Mississippi, that there are two races in Mississippi, to wit, White

and Negro. That if the Japanese invade Mexico they might threaten the Texas and Louisiana oil fields, which would create unrest in Mississippi. That this unrest would cause discontent among the Negroes and they would contend for more privileges which would result in trouble in Mississippi. That such conditions cause race hatred.

All these sorts of arguments are made without any showing whatever that the literature distributed or the words spoken had anything to do with such vague, indefinite and uncertain contingencies. It is to this extent and on this ground, as the State of Mississippi contends, that the activity of Jehovah's witnesses can be suppressed during war time.

It is claimed that this statute is a war measure and designed to aid directly in the prosecution of the war. In truth it is a subterfuge enactment speeded through the legislature of Mississippi and widely advertised as the 'Anti-Jehovah's witness Bill'. It is significant that since the passage of the law not one enemy alien, propagandist, non-interventionist, fifth columnist, pro-Nazi, pro-Fascist or pro-Communist has been arrested or prosecuted. Only Jehovah's witnesses, hundreds of them, have been the object of attack under the statute and that without any evidence that they affected the national war effort.

It is submitted that there is no evidence whatsoever of clear and present danger. Here we need only to refer to *Bridges v. California*, 314 U. S. 252, where, among other things, it is said: "It must be recognized that public interest is much more likely to be kindled by a controversial event of the day than by a generalization, however penetrating, of the historian or scientist. . . . Moreover the ban is likely to fall not only at a crucial time but upon the most important topics of discussion. . . .

"For these reasons we are convinced that the judgments below result in a curtailment of expression that cannot be dismissed as insignificant. . . . For it is a prized American



privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect. . . .

" . . . In accordance with what we have said on the 'clear and present danger' cases, neither 'inherent tendency' nor 'reasonable tendency' is enough to justify a restriction of free expression. But even if they were appropriate measures, we should find exaggeration in the use of those phrases to describe the facts here."

In *McKee et al. v. State*, 219 Ind. 247, 37 N. E. 2d 940 (1941), it was held that the literature distributed by Jehovah's witnesses did not violate the "Criminal Syndicalism" Act of Indiana. See also *Butash v. State*, 212 Ind. 492, 9 N. E. 2d 88. It has been held that same literature did not violate the sedition statutes of Kentucky. *Beeler v. Smith*, 40 F. Supp. 139. See also *Oney v. City of Oklahoma City*, 120 F. 2d 861.

## F

The judicial branch of the government rather than the legislative authority must decide when the liberty of speech must yield to the police power, and in performing this task the courts should make a deeper inquiry than when property rights are involved because presumption of validity of legislative enactments does not overcome guarantees of the First Amendment.

In *Schneider v. State*, 308 U. S. 147, Mr. Justice Roberts said: "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other



personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

Again in the celebrated case of *Herndon v. Lowry*, 301 U. S. 242, Justice Roberts said: "The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution." In this case the court did not permit the presumption of validity of legislative enactments to overcome the Constitution. The presumption of constitutionality was heavily relied upon in *Gitlow v. New York*, 268 U. S. 652, and in *Whitney v. California*, 274 U. S. 357, but was disregarded entirely in *Near v. Minnesota*, 283 U. S. 697, and definitely rejected as not applicable when statutes were applied to activity protected by the First Amendment. See *United States v. Carolene Prod. Co.*, 304 U. S. 144, 151-152-n, 153-n.

In *Thornhill v. Alabama*, 310 U. S. 88, Mr. Justice Murphy expresses the rule thus: "Mere legislative preferences for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations. *Schneider v. State*, 308 U. S. 147, 161, 162."

The booklet "FOUR FREEDOMS" issued by the Office of War Information says: "The exigency of war sets limits

on what information may be given out, lest it give aid and comfort to the enemy . . . Freedom of speech, Justice Holmes has warned, does not grant the right [*"falsely"*] to shout fire in a crowded theatre. When ideas become overt acts against peace and order, then the Government presumes to interfere with free speech. *The burden of proof, however, is upon those who would restrict speech—the danger must be not some vague danger but real and immediate.*" [Italics and bracketed word added]

The state has not undertaken in any manner to discharge the burden put upon it by the foregoing cases. It relies solely upon the legislative declaration of policy which contains no findings of fact to support the same. No facts are presented and no argument is made to justify the abridgment by the state *except that the nation is at war*. There is no showing or contention that the activity has affected the loyalty of any person in Mississippi and the state fails to show any direct proof that any war effort of the state or nation is directly affected by the activity of appellant.

Even when the legislature has made specific findings of fact or when the state has discharged its burden of showing the justification for abridging freedom of speech the courts are not required to accept the conclusions of the legislature or to be bound conclusively by evidence offered by the state. The duty still rests with the court to weigh, evaluate, consider and decide whether the arguments in support of the legislation are sufficient and substantial enough to warrant the restriction. If it were otherwise the legislature would become the supreme law of the land. Constitutional rights would become a nullity. The direct statements of the people in the Bill of Rights would be made impotent by legislative findings and statements of policy. Every conceivable kind of unconstitutional action could be taken against the people by legislative fiat supported by findings of fact and conclusions of policy stated by the legislature. It would

make the judiciary an impotent body—mere ministerial agents of the legislature.

The law presumes that the legislature will do its duty and not enact unconstitutional legislation, but this presumption is a very violent one and is not conclusive. It is immediately overcome when it is shown that the legislation has been applied to activity guaranteed by the Constitution.

In this case a more searching inquiry should be made as to the validity of this law because its enforcement is directed solely at a small, hated, despised and very unpopular minority, the Christian group known as Jehovah's witnesses, the object of hatred and abuse from one end of the nation to the other; not because they violate the law but solely because they preach the gospel of God's kingdom which offends tender religious susceptibilities of some bigoted persons who cannot "take" the truth.

The failure of the state to discharge its burden of proof requires that the court declare the statute invalid, both on its face and as construed and applied.

## G

The cases discussed show that the rule this court applies does not warrant the abridgment of the right of free speech under the facts and circumstances revealed in this case.

The first case to come before this court under the Espionage Act was *Schenck v. United States*, 249 U. S. 47, decided in 1919, in which Mr. Justice Holmes made his much quoted statement about *clear and present danger* and added: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." In that case the defendants, officers of the unpopular Socialist party, were convicted for the distribution of leaflets which urged that conscription was unconstitu-

tional under the Thirteenth Amendment and a "monstrous wrong against humanity in the interests of Wall Street's chosen few". Some of the leaflets went through the mails to drafted men. That case is not in point because it had to do directly with "conscription and drafting" of men into the army. Here in this case the literature and statements do not directly affect the war effort in any way and were confined to a matter of "preaching the gospel", and as to the war effort the appellant was not against nor participating because fully occupied with his God-given "job" of preaching.

Immediately there followed the opinion in *Frohwerck v. United States*, 249 U. S. 204 (1919), where the publications were circulated generally; and in the case of *Debs v. United States*, 249 U. S. 211 (1919), the defendant made public "dangerous utterances" in an exposition of the Socialist political platform, including a condemnation of war as a defect in our social system, before a Socialist audience.

In *Abrams v. United States*, 250 U. S. 616 (1919), the defendants were convicted under the Espionage Act because of public circulation of writings denouncing intervention in Russia and urging curtailment of production with intent to hinder the United States in the prosecution of the war with Germany. Justices Holmes and Brandeis, dissenting, saw in the defendants' conduct no "present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion." (P. 628) At pages 627-631 Mr. Justice Holmes said: "... the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. . . . It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. . . . But when men

have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. . . . While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law . . . abridging the freedom of speech.' . . . ”

In this dissent Mr. Justice Brandeis and Mr. Justice Holmes suddenly realized the great length to which the court had been swept in the enforcement of the Espionage Act in the previous cases and *began to call a halt* and show the need to draw a line else all freedom of speech on the supposition of its ill tendency would be forever done away with.

Then came *Schaefer v. United States*, 251 U.S. 466 (1920), which involved publication of slighting reference to the war strength of the United States and falsifications which consisted of slight additions to and omissions from news reports. In this case Mr. Justice Brandeis expressed alarm at the tendency of the Supreme Court to apply the Espionage Act to “discourage criticism of the policies of the Government.” (P. 494) The dissents in this and other cases showed clearly that perhaps in the original Espionage Act cases as well as in the *Abrams*, *Pierce*, *Schaefer* and

other later cases the court although recognizing existence and applicability of the clear and present danger test had not been applying it as rigorously as due in order to effect protection of the constitutional right and at the same time conserve the interest of the government. Justices Holmes and Brandeis clearly apprehended this danger, because in the *Schaefer* case Justice Brandeis said: "This is a rule of reason. Correctly applied, it will preserve the right of free speech both from suppression by tyrannous, well-meaning majorities, and from abuse by irresponsible, fanatical minorities. Like many other rules for human conduct, it can be applied correctly only by the exercise of good judgment; and to the exercise of good judgment calmness is, in times of deep feeling and on subjects which excite passion, as essential as fearlessness and honesty. . . . If the words were of such a nature and were used under such circumstances that men, judging in calmness, could not reasonably say that they created a clear and present danger that they would bring about the evil which Congress sought and had a right to prevent, then it is the duty of the trial judge to withdraw the case from the consideration of the jury; . . . Convictions such as these, besides abridging freedom of speech, threaten freedom of thought and of belief."

In *Pierce v. United States*, 252 U. S. 239, four men were arrested in 1917 in Albany, New York, for making a house-to-house canvass and distribution of a leaflet issued by the Chicago headquarters of the Socialist Party. They were arrested under the Espionage Act. In that case Justice Brandeis again dissented with Justice Holmes and said: "The cause of war—as of most human action—is not single. War is ordinarily the result of many co-operating causes, many different conditions, acts, and motives. Historians rarely agree in their judgment as to what was the determining factor in a particular war, even when they write under circumstances where detachment and the availability of evidence from all sources minimize both prejudice and



other sources of error; for individuals, and classes of individuals, attach significance to those things which are significant to them. And, as the contributing causes cannot be subjected, like a chemical combination in a test tube, to qualitative and quantitative analysis so as to weigh and value the various elements, the historians differ necessarily in their judgments. One finds the determining cause of war in a great man; another in an idea, a belief, an economic necessity, a trade advantage, a sinister machination, or an accident. It is for this reason largely that men seek to interpret anew in each age, and often with each generation, the important events in the world's history."

*Gilbert v. Minnesota*, 254 U. S. 325 (1920), was the next case, but it did not involve the Espionage Act. There was questioned an act of the Minnesota legislature forbidding public speeches against enlistment and the teaching of abstinence from war. The appellant was convicted because at a public meeting he uttered words held to be prohibited by the chapter. Mr. Justice McKenna held that the law was a simple exertion of Minnesota's police power. As to the claim of violation of free speech he cited *Schenck v. United States*, *supra*, and other cases limiting that right. In that case Mr. Justice Brandeis dissented: "Thus the statute invades the privacy and freedom of the home. Father and mother may not follow the promptings of religious belief, of conscience or of conviction, and teach son or daughter the doctrine of pacifism. If they do, any police office may summarily arrest them. . . . Congress legislating for a people justly proud of liberties theretofore enjoyed and suspicious or resentful of any interference with them, might conclude that even in times of great danger, the most effective means of securing support from the great body of citizens is to accord to all full freedom to criticize the acts and administration of their country, although such freedom may be used by a few to urge upon their fellow citizens not to aid the Government in carrying on a



war, which reason or faith tells them is wrong, and will therefore bring misery upon their country.

"The right to speak freely concerning functions of the Federal Government is a privilege of immunity of every citizen of the United States which, even before the adoption of the Fourteenth Amendment, a State was powerless to curtail. . . . Full and free exercise of this right by the citizen is ordinarily also his duty; for its exercise is more important to the Nation than it is to himself. Like the course of the heavenly bodies, harmony in national life is a resultant of the struggle between contending forces. In frank expression of conflicting opinion lies the greatest promise of wisdom in governmental action; and in suppression lies ordinarily the greatest peril. . . ."

Although none of the cases sustaining these convictions under the Espionage Act or the state law in above case present a situation controlling the issues here, we propose that the statements in the above dissenting opinions should be adopted as the principle to be applied here. None of the cases are in point because they directly affected the conscription of manpower and other facts directly connected with the war. In not one of the above cases is there found any conviction on the evasive theory that "disloyalty" or "refusal to salute the flag" was involved. The facts in those cases are entirely different from those presented here.

During the World War and immediately thereafter the excitement and momentum gained against any speech feared to be fraught with danger moved many of the states of the Union to pass Syndicalism and Sedition laws. The excitement of the war carried over and caused New York to prosecute Gitlow under the Criminal Anarchy Act passed after the assassination of President McKinley. The conviction was affirmed by this court. *Gitlow v. New York*, 268 U.S. 659 (1925). Gitlow had published a thirty-four page manifesto urging the dictatorship of the proletariat, etc. Justice Sanford for the majority held that the "clear and

present danger" test merely served to decide how far the Espionage Act, which dealt with overt acts, should apply to mere words and rested the conviction primarily upon the "presumption" of constitutionality and legislative findings. In that case the clear and present danger test was apparently rejected as a test of constitutionality of the statute. Justices Holmes and Brandeis dissented, urging that the "clear and present danger" doctrine was the test to be applied and that "whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration." Mr. Chief Justice Hughes, in *De Jonge v. Oregon*, 299 U.S. 353, justifies this conviction on the grounds that the "manifesto" circulated advocated the overthrow of the government by violence and unlawful means. This thus distinguishes the *Gitlow* case from the case presented here.

In *Whitney v. California*, 274 U.S. 357 (1927), Anita Whitney was convicted of violating the California Criminal Syndicalism Act. She was charged with having taken an active part in organizing the Communist Labor party in California. Because this party was found to have advocated violent revolution against the United States government this court affirmed the judgment of conviction. In the *De Jonge* case Chief Justice Hughes also distinguishes it from the case at bar and justifies the conviction because she willfully and deliberately formed it for the purpose of revolutionary class struggle by "criminal methods". "The defendant was convicted of participating in what amounted to conspiracy to commit serious crimes". In this *Whitney* case Justices Holmes and Brandeis concurred and Mr. Justice Brandeis took pains to point out that a defendant in such a case should have the right to submit to the jury the question of whether in fact there was a "clear and present danger" that harm would actually result. He also took occasion to clarify again the *clear and present danger* rule. Because

of the importance of its relation here it is quoted from at length. He said:

"But where a statute is valid only in case certain conditions exist, the enactment of the statute cannot alone establish the facts which are essential to its validity. . . .

"This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present; and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgment of free speech and assembly as the means of protection. To reach sound conclusions on these matters, we must bear in mind why a State is, ordinarily, denied the power to prohibit dissemination of social, economic, and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence.

"Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be se-

cured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope, and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

“Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that the serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. . . . But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished rea-

son to believe that such advocacy when then contemplated.

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. . . .

"Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means of averting a relatively trivial harm to society. . . . The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violation of the law, not abridgment of the rights of free speech and assembly. . . ."

On the day that the *Whitney* case was decided this court also handed down another opinion which clearly shows that the majority of the court unanimously followed the concurring views of Mr. Justice Brandeis in the *Whitney* case as the rule to be thenceforth followed. We refer to *Fiske v. Kansas*, 274 U. S. 380, where an I. W. W. organizer had been

convicted under the Kansas statute prohibiting the advocating of criminal syndicalism orally and through the distribution of printed matter. The official views subscribed to by Fiske were in evidence. The preamble of the constitution of the organization was in evidence. He testified that he did not advocate crime, sabotage or other illegal acts and did not believe in syndicalism. The state court in the *Fiske* case upheld the conviction on the ground that the evils prohibited by the statute could be read between the lines of the literature and stated that they need not accept defendant's testimony as a candid and accurate statement. In spite of such conclusion this court set aside the conviction, and said that it was "an arbitrary and unreasonable exercise of the police power of the state, unwarrantably infringing the liberty of the defendant." In this connection note that the appellant said that he had *not* advocated or told anyone *not* to salute, honor or respect the flag. The literature does not incite such acts. Neither the appellant nor the literature advocates violence, sabotage or disloyalty to the government or state.

We come now to the next case dealing with this question: *Stromberg v. California*, 283 U. S. 359 (1931). Yetta Stromberg, an American born Russian, was a member of the Young Communist League, and a supervisor of a summer camp near San Bernardino. Every day at the camp under her direction a red flag was run up bearing a hammer and sickle, emblem of Soviet Russia, and the children were caused to repeat: "I pledge allegiance to the workers' red flag and the cause for which it stands, one aim throughout our lives, freedom for the working class." She was charged with violating the California Penal Code prohibiting display of a red flag in a public assembly "as a sign, symbol or emblem of opposition to organized government, . . . or as an aid to propaganda that is of a seditious character." In declaring the statute invalid Mr. Chief Justice Hughes said: "The maintenance of the opportunity for free political dis-



cussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment." We submit that the *Stromberg* case is controlling here.

Then came *De Jonge v. Oregon*, 299 U. S. 353 (1937), which held that mere participation in a Communist meeting did not warrant the application of the state's syndicalism act. In setting aside the conviction this court through Chief Justice Hughes said: "The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political [public] discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the republic, the very foundation of constitutional government."

The latest case dealing with this sort of statute as applied to the expression of ideas considered inimical to the government is *Herndon v. Lowry*, 301 U. S. 242. The appellant in that case was a Communist and a Negro paid to organize the Negroes in Georgia, and especially in Atlanta, into communist groups. The literature possessed by him urged that the Black Belt, the deep South, should be made one governmental unit, ruled by the Negro majority. The



books also advocated strikes, boycotts, and revolutionary struggle for power. He was charged with an alleged violation of the law forbidding insurrection. The section upon which the conviction rested read: "Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection." The statute was passed in 1832 and enforced for the first time in 1932. In that case Justice Roberts, for this court, repudiated the *reasonable tendency* view in the *Gillow* case as well as the doctrine of "finality" of legislative declarations of policy affecting civil rights. The conviction was set aside because abridging freedom of speech.

More recently the court in *Thornhill v. Alabama*, 310 U. S. 88, has taken occasion to make statements which are appropriate here: "The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government." See also *State v. Sentner*, 230 Iowa 590, 298 N. W. 813; *State v. Klapprott*, 127 N. J. L. 395, 22 A. 2d 877.

The rule has been restated by the Criminal Court of Appeals of Oklahoma in the case of *Shaw v. State*, .. P. 2d .., decided in February 1943. Judge Jones for the court held that a Communist could not be convicted under the Syndicalism statute of that state. In setting aside the conviction he said: "It is strange indeed that there might be

those who seek to overthrow our existing government which guarantees these freedoms and attempt to transform this republic into one where the word of the dictator becomes the law of the land, and then when he is caught practicing these subversive doctrines presents as his defense the very liberties which he would destroy. But if we were to deny to one of these any one of the guaranties provided by our Constitution it would establish a precedent that might in the future cause the arrest and confinement of thousands of our citizens and would more surely result in a violent revolution and overthrowing of our government than these alleged statements of a puny few.

"It has always been a difficult problem to determine whether loose utterance directed at our government, when spoken, might better be left unpunished by the criminal laws of the land with the belief that the good judgment of the overwhelming majority of the citizens would control the evil that might result from any errors of statement made in such utterances so far as the public welfare might be endangered thereby. When people get in a certain frame of mind they should be left at liberty to speak with that freedom with which the magnitude of the supposed wrongs appear in their minds to demand. The question, however, is whether the utterances of criticism of the government are made in a peaceable manner or at such a time and place as might be immediately dangerous to public peace. It is a legislative question, but a serious one, as to what is the best and wisest way to deal with the thoughts, feelings and existing prejudices of the human mind and whether anything can take the place of free public discussion. Often we have seen illustrations where the average person, when given an opportunity to let off a little steam and publicly express himself against the possible wrong-doings of the government, is fully satisfied. It would seem that we should take all steps adequately to protect our existing institutions, but at the same time so preserve them that the wording of the

law may not be construed to make trouble for many patriotic citizens who may disagree with existing conditions in the affairs of our government. . . . If this court were to sustain the conviction it could only be because there is a popular demand for it and this in effect would mean a substitution of mob rule for that of the courts of law."

It seems plain therefore that this court will not stop its inquiry with even an actual and present danger, where that danger is overcome by the gains and advantages of free and full discussion.

What are the *advantages* of free speech? They are many, and they outweigh, undeniably, conceivable disadvantages. When in *this* Republic, even in time of war, every one remains unshorn of his liberty freely to speak, here as nowhere else is generated and thrives, necessarily, the healthy and wholesome "freedom from fear". Boldness, courage, calmness and confidence increase!

He who discerns defects in the manner of executing governmental policies and who then, under *fear* of punishment *by the government*, cravenly OMITTS to call attention to those defects is performing, in fact, a disservice to his fellows—is committing an act of unfaithfulness, disloyalty, like unto that chargeable against a trusted watcher who fails to warn his wards of danger seen only by him while there is yet time for all concerned to prevent or to correct the evil.

Likewise, when ALL within the broad expanse of this peculiarly singular "land of LIBERTY" are *free* to speak, in times of both war and peace, there results the additional advantage of both friends and foes being at liberty always openly to identify themselves and to be recognizable as worthy by their own words to be justified or condemned.

But when the *American* constitutional right of every inhabitant to speak freely is *denied* under pretext of "time of war" (or other pretext in peace-time), the resultant strangling and stagnation of thought, growth and advance-

ment not only breeds in friends fear, distrust, suspicion, and even resentment and hostility, but equally serves wrongfully to *shield the foe within* this land who secretly cherishes those evil traits and who by connivance with others of like mind is thus enabled covertly to plot and suddenly to commit overt acts to injure, if not utterly destroy, both government and people.

Can the highest civil officers of this land of liberty, who in time of war as in time of peace are duty-bound to administer NOT *martial* law but constitutional law—can those civil officers judicially and judiciously degrade the sovereign American people's declared ideals to the low and despised level of totalitarian jurisprudence under the subtle pretext that this is a *time of war*?

Surely the American judiciary, even in time of war, is rightly not *less* democratic, not *less* mindful of and responsive to the sovereign people's ideals declared in their Constitution, than are the highest civil officers who commendably discharge, even in this crucial season, their duty to maintain civil rights of the fewer and, dare we say, *less* progressive people of the British Isles!

DANGER to government is far greater and more clear and ever present in times of peace *as well as in time of war* when the right of speech or criticism is suppressed. If men do not have the opportunity to correct evil and misunderstandings by speech, open discussion, then the only means left is usually by violence or other unlawful means. The value of the interests threatened by the conduct as well as by the legislation must be considered and weighed. The only possible way to avoid violence or unlawful action is by always preserving, open and accessible to all, black or white, poor or rich, popular or unpopular, bond or free, the broad avenue of communication—freedom of speech and press.

It is submitted therefore that the conviction should be set aside because the right of free speech is abridged contrary to the Constitution.

## TWO

**The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.**

The undisputed evidence shows that appellant was an ordained minister of the gospel and duly classified as such by his local draft board. He was preaching from house to house, visiting the people in their homes, explaining all about God's kingdom as the only hope for relief from the sufferings of mankind and as the only means to gain life, happiness and peace. In doing this he was and is entitled to the same degree of constitutional protection as would be the clergyman of the leading "church" of the town when uttering words from the pulpit. The fact that appellant was visiting the people in their homes in the manner as did Christ Jesus and His apostles, and there explained Bible prophecy, did not and does not weaken the right to constitutional protection for preachers to speak. As he spoke he was preaching the gospel. This cannot be denied. He came to the homes to explain the Bible and to comfort the women concerning their beloved dead, a custom well recognized long before there were constitutions or even governments in this world. To allow the conviction of appellant in circumstances such as these would open the door to similar prosecutions against some of the clergy for zealous remarks, innocently uttered.

The conviction here is an unconstitutional abridgment of freedom of worship and the right to preach the gospel. We have presented a full discussion of this matter under Point TWO in the brief filed in the case of *Cummings v. The State of Mississippi*, which discussion we incorporate here by reference as though printed at length herein.

### THREE

**The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.**

The right of freedom of the press also is here involved. It is directly concerned because appellant was distributing literature which contained information and opinion. The most fundamental and delicate of human rights is the freedom of the press. Without a free press there cannot be a democratic government. The distributor and the printer are equally protected in the exercise of this right. Appellant was the distributor of the literature in question. The abridgment of his right of freedom of press is unconstitutional, and violates the guarantees of the First and Fourteenth Amendments.

We have fully discussed the right of freedom of the press under the argument of Point THREE in the brief filed by appellant in the case of *Benoit v. The State of Mississippi*, pages 19 to 42. For the convenience of the court and to save time and space we incorporate that entire argument herein by reference and here make it a part hereof as though printed at length herein.



## FOUR

**The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.**

For sake of saving time and space this point, insofar as it relates to the three cases, will be discussed here. The briefs in the other two cases incorporate this discussion by reference.

Disloyalty is defined to be anything which affects the "morale" of the people. The court says: "The spirit and morale of the people; their willingness to help financially by personal effort; their support of, belief in, and respect for the government are essential to its successful prosecution. The legislature knew the local conditions—that we have two races about equal in numbers in this state, and that under the stress of the times agitation and subversive influence should not be abroad among the people." (Taylor Record p. 155) Clear and present danger is not required, as heretofore indicated. On this question the court said: "It is true that listeners in this case who testified said this was not the result upon them; that they had a feeling of resentment against appellant. *But in later days, when adversities of war may become more acute, who can say what their reaction may be?* . . . Again, an attitude of disloyalty and disrespect to the flag and the government is not likely to be shown immediately in some overt act evidencing such attitude. This is fruit to be produced after gradual growth and



maturity from the evil seeds which have been sown.”—Taylor Record pp. 159-160.

In the *Cummings* case the construction placed on the statute by the court below allows a conviction in the absence of anyone “reading” the literature and upon a showing that defendant refused to salute the flag when requested and when he offered an explanation as to why he did not in response to the request to salute.

In the *Benoit* case the statute has been construed so as to allow conviction when it is shown literature was said to have been distributed to one who professed to be one of Jehovah’s witnesses. The complaining witness, a Negro woman, professed to Betty Benoit to be of “good will” and had much of the literature. She was one time a regular subscriber for *The Watchtower*. There it is not shown that the complaining witness read the literature. It is not necessary that the literature be read. Persons reading the literature are not required to be affected by it. If one would believe that at any time in the future a reader might become disloyal the jury could convict: It is not necessary that the “disloyalty” advocated relate to the war effort, but the “disloyalty” made the basis of the statute can be any kind of disloyalty to the nation’s policies or interests, domestic or foreign, military or civil. It can even be established by a showing that there are two races of people in Mississippi, white and black, and that some day there might even be dissension between the races. Many other vague, indefinite, and imaginary contingencies that have no relation, either directly or indirectly, to the war effort may be considered in determining whether one is guilty.

The statute prohibits a father from teaching his child that the Bible declares God’s law to forbid the salute of the flag. Says Judge Roberds: “Aside from the other elements contained in the statute, it can readily be understood why the jury might conclude that what was said and done here, and the reason behind the arguments, would reasonably

cause such refusal to salute, honor or respect the flag. That is conclusively shown in the cases above cited where children of the members of this sect choose to be expelled from school rather than salute the flag. There were children present on the occasion at the home of Mrs. Joyner. Illustrations of vagueness and indefiniteness are set out in note 70, L. Ed. 322. The question is not without doubt, but we do not think this law is invalid on this ground." Taylor Record p. 161.

In the *Taylor* case Judge Alexander says in his dissent: "Since disloyalty may connote language or acts which go no deeper than a disapproval or lack of sympathy with governmental policy, it lacks a reasonably definite standard of guilt." R. 171.

A jury would be authorized to convict if it found that the hearer or reader believed it wrong to salute the flag or disagree with any governmental policy at any future time regardless of however remote. It is not necessary to prove that the appellant intended such results or that the defendant in fact believed that such would result. In matters such as this there is no yardstick by which influence can be measured. Just when and where the truth of God's word will take hold and persuade an individual no rule can be fixed. Take the case of the apostle Paul as an example. He changed immediately from a persecutor to an apostle. Some read and hear the message and are slow to act. Others never act. Still others disbelieve it and oppose it violently immediately when it is heard. There can be no measuring rod prescribed as to just the circumstances under which one can be influenced in matters pertaining to the Bible. It is plain that action or even belief to the point of "disloyalty" or "refusing to salute the flag" may extend into the indefinite future and neither juries nor trained experts can have the necessary knowledge or information wherewith to measure it. The period during which persuasion may remain effective, during which men will march to the measure of another man's

thought, is in a case like the present one not only completely outside the experience of ordinary men; it is entirely within the realm of the unknown and the field of speculation. Under the statute and the construction given it the jury and judge trying the case are left free to guess, surmise, and upon the product of conjecture award a judgment that interns the citizen for a period of ten years.

The due process clause requires that criminal statutes shall be so framed that those to whom they are addressed may know what standard of conduct is intended to be required, so that men may guide their steps accordingly. *United States v. Capital Traction Co.*, 34 A. D. C. 592; *Tozer v. United States*, 52 F. 917; *United States v. Cohen Grocery Co.*, 255 U. S. 81.

The question here presented was specifically disposed of by this court in favor of appellant in the case of *Herndon v. Lowry*, 301 U. S. 242, where Mr. Justice Roberts said: "Every person who attacks existing conditions, who agitates for a change in the form of government, must take the risk that if a jury should be of opinion he ought to have foreseen that his utterances might contribute in any measure to some future forcible resistance to the existing government he may be convicted of the offense of inciting insurrection. Proof that the accused in fact believed that his effort would cause a violent assault upon the state would not be necessary to conviction. It would be sufficient if the jury thought he reasonably might foretell that those he persuaded to join a party might, at some time in the indefinite future, resort to forcible resistance of government. The question thus proposed to a jury involves pure speculation as to future trends of thought and action. . . . The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change of government if a jury can be persuaded that he ought to have foreseen that his words would have some effect on the future conduct of others. No reasonably ascertainable stand-

ard of guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment. The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion."

In *Stromberg v. California* (1931), 283 U. S. 359, the California statute was declared unconstitutional because of its vagueness and indefiniteness. See also *De Jonge v. Oregon*, supra. In *Lanzetta v. State* (1939), 306 U. S. 451, in declaring the New Jersey "gang law" invalid, Mr. Justice Frankfurter said: "If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. . . . It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. . . . No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. . . . The applicable rule is stated in *Connally v. General Const. Co.*, 269 U. S. 385, 391."

In finding invalid the section of the Alabama Code involved in *Thornhill v. Alabama*, 310 U. S. 88, 97-98, Mr. Justice Murphy said: "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. . . . A like threat is inherent in a penal statute . . . which does not aim specifically at evils within the allowable area of statute control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and per-

vative restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. . . . Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression."

The Supreme Court of New Jersey in *State v. Klapprott*, 127 N. J. L. 359, 22 A. 2d 877 (December 5, 1941), declared the "Anti-Nazi Law" of New Jersey invalid as construed to the hate speeches of the Nazi Bund members inciting violence against the Jews. In setting aside the convictions that court found the statute vague, indefinite and a dragnet. The court said: "Suppose such statement was made in the privacy of one's home to two persons there present, or, as it is suggested in the excellent brief of the amicus curiae, suppose a father is instructing his children about the religion of a neighbor and such exposition excites hostility in the children towards those neighbors. This exposition or statement of view would result in the commission of a misdemeanor under the scope of this most sweeping statute. It is not required that the statement be made in a public place. Teachers in our high schools and colleges could be found to be violators of the law out of their lectures on the philosophy of history, or their dissertations on religion, or on the various cults which came into being through the years."

In further support of the contention here urged reference is made to *Smith v. Cahoon* (1930), 283 U. S. 564; *Connally v. General Const. Co.* (1925), 269 U. S. 391, 392; *Small Co. v. American Sugar Ref. Co.* (1925), 267 U. S. 233; *United States v. Cohen Groc. Co.* (1920), 255 U. S. 81; *Weeds, Inc. v. United States* (1920), 255 U. S. 109.

The Mississippi Supreme Court failed to aid in the construction of the statute so as to narrow its application within the permissible limits but gave the statute as broad an application as was possible to allow so as to permit the widest possible latitude for suppression of liberty.

The statute on its face is vague and indefinite so as to constitute a dragnet. The words "designed and *calculated* to encourage" are viciously general. "Which would incite," are equally vague and uncertain. The words, "disloyalty to the government," are indefinite, and uncertain of limited or defined application. "Disloyalty" is not defined by statute and is not prohibited by any statute. The term "advocate the cause of the enemies" has been construed by the court below to reach any sort of "disloyal" language or acts. Thus the term can include any number of facts and circumstances—the manufacturer, laborer, businessman in innumerable instances of acts or words. As to that part relating to inciting "racial distrust, disorder, prejudices or hatreds", it is patently vague and indefinite. In parts one race predominates over another and what might stir up hatred and prejudice in one locality would not in another. A violation of the statute in that regard would depend on the opinions of the persons hearing the words. No man of ordinary intelligence can safely discern from this statute just what he can say or write to his neighbor, friend, family or the public.

The statute covers equally lawful and unlawful words and conduct and makes no distinction between the truth and falsehoods. The language of the statute may apply not only to a particular act about which there can be little or no difference of opinion, but equally applies to other acts about which there may be radical differences, thereby devolving upon the courts the exercise of arbitrary power of discriminating in the enforcement thereof. The statute gives ample leeway for those who may be in control so to enforce the statute with arbitrary and harsh discrimination that all dissemination of free discussion, oral or printed, can be



stopped. The very fact that these faithful followers of Jesus Christ who refuse to break their integrity to Almighty God and who are guilty of no wrong have been convicted is proof conclusive that the statute is a dragnet. The statute depends for its enforcement, meaning, and understanding upon the political views, whims and opinions of the individuals, and not upon defined precise rules of law, equally applicable at all times throughout the state.

It is respectfully submitted that the statute prescribes no ascertainable standard of guilt and is a dragnet allowing deprivation of liberty in violation of the Fourteenth Amendment to the United States Constitution.

## FIVE

**The general verdict rendered against appellant will not support a conviction where the undisputed evidence shows that either ground of conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.**

It should be noticed that the indictment is based upon two separate kinds of statements. Some are oral and some written. The indictment is not in two counts. The oral statements are based upon two separate clauses of the statute. The written statements are likewise based upon the same two separate clauses of the statute. The verdict was a general one. There is nothing in the record to determine whether the jury believed the testimony of the women as to the oral statements made or if the jury based their verdict solely upon the mere distribution of the literature. Nor can it be determined whether the jury reached the conclusion that the statements violated the "disloyalty" clause of the statute or whether they believed the "salute of the flag" clause had been violated.



In these circumstances if this court reaches the conclusion that the statute has been applied so as to violate the Constitution, and in such event if the verdict is not supported in any particular element on any charge, the judgment must be set aside.

This matter is specifically disposed of in *Stromberg v. California*, 283 U. S. 359, 364-368. In that case Chief Justice Hughes said: "As the trial court had treated the three purposes of the statute disjunctively, and the appellant had accepted that construction, we think that the only fair interpretation of her contention is that it related to the validity, not merely of the statute taken as a whole, but of each one of the three clauses separately relied upon by the state in order to obtain a conviction. Her concession as to the interpretation of the statute emphasizes, rather than destroys that contention. . . .

"Having reached these conclusions as to the meaning of the three clauses of the statute, and doubting the constitutionality of the first clause, the state court rested its decision upon the remaining clauses. . . .

"We are unable to agree with this disposition of the case. The verdict against appellant was a general one. It did not specify the ground upon which it rested. As there were three purposes set forth in the statute, and the jury was instructed that their verdict might be given with respect to any one of them independently considered, it is impossible to say under which clause of the statute the conviction was obtained. If any one of the three clauses, which the state court has held to be separable, was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause. . . . It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the

Federal Constitution, the conviction cannot be upheld."

More recently this rule has been followed in the case of *Williams et al. v. State of North Carolina*, 63 S. Ct. 207, 210, where Justice Douglas said: "That is to say, the verdict of the jury for all we know may have been rendered on that ground alone, since it did not specify the basis on which it rested. It therefore follows here, as in *Stromberg v. California*, 283 U. S. 359, 368, that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained. . . . To say that a general verdict of guilty should be upheld, though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights."

We submit that if the court finds here that there was no clear and present danger from either the written or oral statements, the conviction should be set aside. Furthermore, if the court reaches the conclusion that any clause of the statute upon which conviction rests is invalid because of impairment of the constitutional rights or vagueness, the conviction cannot stand.

## Conclusion

Jehovah's witnesses have been for many years in the State of Mississippi preaching under the direction of the *Watchtower Society* the Gospel of God's kingdom as the only hope for mankind to acquire everlasting life and happiness under a government of righteousness. These truths they must declare regardless of what man may say or do to them. It was not considered necessary to engage in violence or resort to oppressive measures against such covenant servants of Jehovah until the Nazi spirit of regimentation swept the globe.

About two years ago a reign of terror by mob violence

against them began in Texas and Mississippi and spread to every State in the Union, but that did not stop the beneficial activity of Jehovah's witnesses. The blood spilled and destruction thus wrought did not satisfy these enemies of liberty. Frustrated, they introduced in the legislature of that state *House Bill 689*. When the bill became public it was manifest to Jehovah's witnesses that it was directed at them because of their refusal to salute the flag and refusal to discontinue preaching in the state. Jehovah's witnesses appeared at a public hearing in the legislative chambers to protest the passage of the bill and to offer evidence before the committee showing need for an exemption of those preaching the gospel and to protect those who refused to salute the flag for conscience' sake. At this hearing they were denied the right to speak or offer evidence. An effort was made to circulate written evidence among the individual legislators. Because the representative of Jehovah's witnesses refused to discontinue the circulation of the evidence and leave the capitol building he was assaulted and beaten on the spot by a member of the legislature who engineered the bill through the house and senate.

Immediately upon the act's becoming effective Jehovah's witnesses were arrested and have been continuously prosecuted throughout the state in great numbers in the name of and by the authority of the enactment because they refuse to stop preaching. There have been no arrests of any propagandist of the enemy, fifth columnist, saboteur, striker, or any disloyal person under the act. Only Jehovah's witnesses have been arrested. The act is serving its intended purpose of providing an instrumentality to "get" Jehovah's witnesses. In this one cannot escape the prophetic Psalm of the warrior David, who wrote: 'The throne of iniquity shall frame mischief by law.'—Psalm 94: 20.

Against a similar condition and tyranny the founding fathers of this nation fought a rebellion to throw off and out of this land the heavy yoke of their oppressors. In 1765,

in the Virginia House of Burgesses, faced with the 'treason and sedition' act of Great Britain, the infraction of which made him liable to be quartered, drawn or hanged, Patrick Henry among other things spoke:

"Should I keep back my opinions at such a time, through fear of giving offense, I should consider myself as guilty of treason towards my country, and of an act of disloyalty towards the Majesty of Heaven, which I revere above all earthly kings. . . . For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst, and to provide for it. . . . Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death."

These classic words no longer are meaningless sounds uttered in school declamation contests, but now become the living, burning protest of Jehovah's witnesses against the tyranny of legislative and executive officers of Mississippi who have exceeded their authority and who now assault their own sovereign people by suppressing all speech not pleasing to them, thus denying all liberty of the people under the guise of "sweet peace" and "national unity" which they themselves are destroying by the wrongful enforcement of this legislative act.

The sooner the persecutors of Jehovah's witnesses learn that they cannot, by mobs or by misapplied laws, stop the irresistible flow of Jehovah's message, the better it will be for them. The nailing of Christ Jesus to a tree served only to intensify the preaching of the gospel because all His followers unbreakably held to the unchangeable rule recorded at Acts 5:29, "We ought to obey God rather than men"; and Acts 4:19, "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." From this true and righteous rule even today Jehovah's witnesses cannot separate themselves when confronted with commands to stop preaching the gospel of God's kingdom.

Respectfully and confidently,

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*Attorney for Appellant*

**R. E. TAYLOR**

**APPELLANT**

**V**

**STATE OF MISSISSIPPI, APPELEE**

**APPEAL FROM THE  
SUPREME COURT OF MISSISSIPPI**

**BRIEF FOR THE STATE OF MISSISSIPPI**

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**GREEK L. RICE, ATTORNEY GENERAL  
GEO. H. KERRIDGE, ASSISTANT  
ATTORNEY GENERAL**



**SUPREME COURT OF THE  
UNITED STATES**

**OCTOBER TERM 1942**

NO. \_\_\_\_\_

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XIV.

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IN THE SUPREME COURT  
OF THE UNITED STATES

OCTOBER TERM 1942

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R. E. TAYLOR

APPELLANT

V.

NO. \_\_\_\_\_

STATE OF MISSISSIPPI

APPELLEE

---

BRIEF FOR THE STATE OF MISSISSIPPI BY  
GREEK L. RICE, ATTORNEY GENERAL, AND  
GEO. H. ETHRIDGE, ASSISTANT ATTORNEY  
GENERAL.

The appellant, R. E. Taylor, was indicted in the circuit court of Madison County, Mississippi, at the June term thereof, the indictment appearing at pages 5 to 7 of the record. The appellant was jointly indicted with his wife, Mrs. R. E. Taylor, who was not tried at the June term, 1942. It is charged in the indictment that R. E. Taylor on the 29th day of June, 1942, in the county aforesaid, did then and there wilfully, intentionally, unlawfully, and feloniously teach and disseminate teachings orally in that he said to Mrs. T. K. Joyner, Mrs. W. B. Denson, Mrs. Huston Bryant, and other persons whose names are unknown to the Grand Jury, "It is wrong for the President to send the army across for they are just being shot down for nothing. Hitler will rule, he will not come

over here to do it. He won't have to. If we would quit kneeling and worshipping our flag, peace would come to us, and study and learn this literature and worship in the right way, peace would come to earth, but as long as we go around worshipping our flag and government, we will never have peace, for we just worship our flag and government for our religion." (R. p. 5) The indictment alleges that "they said to Mrs. T. K. Joyner and Mrs. W. B. Denson that their boys might have thought they were doing right, but that it is wrong to fight our enemies, and other words and teachings, all said teachings and words were designed, and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, to honor and respect the flag and government of the United States of America and the State of Mississippi; and did then and there wilfully, intentionally, unlawfully, and feloniously distribute literature and printed matter in that they did hand out and distribute to Mrs. T. K. Joyner, Mrs. Huston Bryant, Mrs. W. B. Denson, and other persons whose names are unknown to the Grand Jury at this time, books and pamphlets entitled GOD AND THE STATE which contains the statement 'Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world, Jehovah's Witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment.' " (R. p. 6)

The indictment also alleges other paragraphs and statements of disloyalty to the United States of America, and alleges that books and pamphlets entitled REFUGEES contain the statements, "All nations of the earth today are under the influence and control of the demons. All the nations suffer the same fate or come to the same end, because all nations of the earth are on the wrong side, that is on the losing side. All of such nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God . . . All are under the control of the invisible host of demons." (R. p. 6) The indictment further alleges that books and pamphlets entitled LOYALTY contain the statement, (R. p. 7) "For the Christians to salute a flag is in direct violation of God's specific commandment," and contain other paragraphs and statements of disloyalty to the United States of America.

The indictment alleges that they also distributed books and pamphlets entitled END OF THE AXIS POWERS, COMFORT ALL THAT MOURN, which contains the statement, "Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of the Theocracy they must hold themselves entirely aloof from warring factions of this world." (R. p. 7)

The indictment alleges that "the said pamphlets and books were published by Watchtower Bible and Tract Society, Inc., International Bible Students Association, and were designed and calculated to encourage disloyalty to the Government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States of America and the State of Mis-

Mississippi contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Mississippi." (R. p. 7)

The defendant in the trial court filed motion to quash, (R. 10) in which motion certain grounds were given as reason therefor, which motion is directed to the constitutionality of the act of the legislature, known as H. B. 689 of the regular session of 1942, which is Chapter 178 of the Laws of 1942. (Appendix A) The motion to quash has the substance but not the form of a demurrer, and under our statute objections appearing on the face of an indictment must be taken by demurrer not otherwise. However, the defendant demurred to the indictment, setting up the same grounds in the substance as the motion to quash which demurrer appears at pages 13-15 and 18 of the record. Both the motion to quash and the demurrer were overruled and the case proceeded to trial. (R. 13-16)

Two main questions as to the constitutionality of Chapter 178, Laws of 1942, (Appendix A) arise on the record: First. Is the statute constitutional on its face, that is, can it be upheld as to any of its features or to any of the things made criminal thereby; and, Second. Is it constitutional as applied to the evidence in the record? The other questions raised may also be considered. **The statute is a war measure and a state of war actually existed at the time it was enacted. Many things may be prohibited in time of war that would be permissible in time of peace. Every person in the United States has had his ordinary peace time liberties abridged, or suspended. We have to give up rights in time of war that are considered fundamental liberties in time of peace. It is not necessary to enumerate them for we daily confront them in rationing of many of the necessities of life and even more so in**



the conveniences of life, to say nothing of luxuries. The statute under review does not command affirmative acts. It prohibits a number of things deemed dangerous to the unity, the loyalty and the peace and safety of the state of Mississippi and of the United States. There is much force in what Justice Roberds says in the main opinion in *Clem Cummings v. State*, 11 So. (2nd) 683 as follows:

"The Mississippi statute does not attempt to coerce, control or direct, in the slightest degree, the conscience or religious beliefs of any person. So far as that statute is concerned, one may believe in and worship a Divine Being, or any ideal or thing the worshipper may think divine, under the name of Jehovah, or any other name; or, on the other hand, he is free to worship Satan, a golden calf, any animal or thing, or any image of anything, real or imaginary. What the statute does prohibit is the going about into the homes and among the people, and, by affirmative teaching and action, attempting to persuade the people, at this tragic time, to have disrespect for and disloyalty towards the flag and the state and the nation, and to evince an attitude of disobedience to the laws of the land, thereby undermining the war efforts of the state and national governments. The statute does not command any one to salute the flag or do anything else; it simply demands that people shall not engage in certain affirmative activities which the sovereign state, through its legislature, has determined are harmful to other people and to the public welfare and to the defensive war efforts of the state and nation."

The majority opinion delivered also by Justice Rob-

erds in the instant case is a complete answer, in my opinion, to the challenge to the constitutionality of Chapter 178, Laws of 1942. (Appendix A). Further argument will be made, with citation of authorities deemed proper, later in this brief, but I desire also to quote in full the concurring opinion of Justice Griffith in the Cummings case, as follows:

"Teaching that to salute the National flag is an act of idolatry, and that the consequences of such an act is eternal damnation, is a pointed symptom of the disease which lies at the bottom of the subversive and destructive doctrines which this appellant and his co-workers are seeking to spread in our state in this time of war, the result of which means everything to us as a state and nation. We must look behind technical obscurities and to the substance of things. If appellant may maintain the right so to teach it and urge it among the soldiers and marines wherever access may be had to them; and if our soldiers were to refuse to salute the flag wherever unfurled, and particularly when the military regulations require them to do so, then we would have an army and a navy which would be entitled to no respect at home or abroad; and whoever teaches that which, if followed, would bring our armed forces into such disrespect ought well to be in the penitentiary, as the statute appropriately declares." 11 So. (2nd) 684.

The evidence on behalf of the state supported the allegations of the indictment. The ladies mentioned above testified to the statements contained in the indictment. The testimony of Mrs. Houston Bryant begins at Page 45 of the record and extends to page 68. On page 47, this witness says:

"Well, the first time he came to our home he had those books, and he said he was not selling books for a living; said he was selling those—distributing those books for the people to live by, and to teach their children by."

On Page 47, she said further:

"Well, he said it was wrong for our President to send those boys across in uniform to fight our enemies; said it was wrong to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come here to rule; and he said the quicker people here quit bowing down and worshipping and saluting our Flag and Government, the sooner we would have peace. He said it was wrong to fight our enemies; that we were being shot down for no purpose at all."

In answer to a question by the District Attorney, she said, "Yes, sir; he said he may have thought he was doing the right thing by going over there and fighting for his country," referring to the son of the witness.

"Q. But what did he say about whether it was right or wrong?"

"A. He said it was wrong."

The books and pamphlets distributed by the defendant to the witnesses were identified and introduced by the District Attorney. (R. 48-52 & 91). The contents of the said books, as alleged in the indictment, were introduced into the record and not the whole of the said pamphlets or books, but later the entire substance of the books seems to have developed in cross-examination and the books were introduced as evidence.

Mrs. T. K. Joyner was introduced as a witness by the state. (R. pp. 69-82) Pamphlets and statements by the defendant, as given by this witness, are substantially the same statements as made to the first witness, Mrs. Houston Bryant, and the pamphlets are identical. I deem it unnecessary to set out by quotation the testimony of this witness. The court will, of course, read the record and see that there is substantially no conflict in the evidence of the three witnesses. Mrs. W. B. Denson was the third witness introduced by the state. (R. 83-91) I quote, in part, as follows:

"Q. Did they talk in that tone and about that speed?"

"A. So, they said this country was clamoring for dictatorship, and it was wrong for the President to put uniforms on our boys and send them to fight the enemies; and they said the sooner we quit bowing down to the Flag—to the government and her Flag, that much sooner would we have peace; that we couldn't have peace as long as we believed in saluting the flag. And he said that Hitler would rule; he said that he wouldn't come here, he wouldn't have to, but he would rule; and he said there were just as many sheep—he divided the people as sheep and goats, the Jehovah's Witnesses were the sheep and the believers; and he said there were just as many sheep in Germany as there were here. And just at this time, Mrs. Taylor spoke up and said, 'You know you would hate to see a German mother lose her son as much as you would anyone else.' But he told me to study the literature and that I would get comfort from it."

Some of these state witnesses had sons who had lost their lives in public service, and it was conversely shown in the evidence that the sons would come back and live on earth, which statement was made seemingly to comfort the mothers who had lost their sons in the present war.

With the testimony of these three witnesses, the state rested; whereupon the attorney for the appellant filed a motion for a directed verdict, which appears on pages 92 to 94 of the record, which motion was overruled. Whereupon the defendant introduced a witness, Mrs. G. C. Clarke, who attended the preliminary trial and was introduced to show that the testimony of the state witnesses were at variance on the present trial from that of the preliminary trial. She testified that she was present at the preliminary trial and heard the state witnesses testify, but that she had not heard them testify on the present trial. She testified that on the preliminary trial they testified that the defendant said to the witnesses for the state that their sons would be resurrected; that she could not repeat the identical words, but she could the substance of it; and that she was positive they said Hitler would win the war.

"Q. Isn't it a fact that they said Hitler would rule?"

"A. No, he said Hitler would win the war." R. 103.

She was not a Jehovah Witness, she testified, but she had been a teacher and she did not teach the literature involved.

R. E. Taylor, the defendant, testified. His testimony begins at Page 104 of the record and extends to Page 135. He testified that he was an ordained minister of the Jehovah Witnesses, but that he did not believe

and did not teach that it was wrong for any person to salute the flag who was not under a covenant with Jehovah, and testified he did not say that Hitler would win. He testified in answer to a question, "Did you tell her Roosevelt was doing wrong by putting uniforms on the boys?" He said, "I will answer that by saying that has not taken place at any time, that has not happened yet, to send them off to be shot down." The jury accepted the State's evidence as being the facts.

As I understand, the appellant in this case, as in the other cases, is relying largely, if not entirely, upon the unconstitutionality of Chapter 178 of the Laws of 1942, (Appendix A) and this brief will be addressed largely to that question.

Chapter 178 of the Laws of 1942 is a war statute and is for the protection of the state and nation from disloyal activities by persons with the intent to obstruct the war activities of the state and nation. It is in no sense an anti-religious act and is not intended to interfere with proper religious liberty as recognized and enforced in the courts of this nation and the states. The act expressly declares that it will terminate at the end of the present war.

The act is prefaced with statements of the reason for its enactment which clearly show that it was enacted as a police measure in aid of the Federal Government in waging the present war, and which only applies to persons whose religious views conflict with the law of the land as interpreted by the highest courts of the land. There must be a dividing line between governmental authority and the liberties of the citizens and that line must be determined in the light of the history of the origin of the government and since the United States became a government with a



written constitution limiting the power of the government and defining the liberties of the citizens.

In connection with Chapter 178, the legislature at its 1942 (Appendix A) session also enacted Chapter 155 of the Laws of 1942, (Appendix B) requiring students in all public schools of the state to take the pledge of allegiance to the flag, and to the Republic for which it stands, the statute giving the pledge in its most usual form in this country. However, the state from 1916 to the present time had (and still has) a statute protecting the flag from insult and dishonor, enacted in 1916, prior to our entry into the World War. This statute is Section 930 of the Code of 1930 and was originally Chapter 118, Laws of 1916. It is a rather long statute and designed to preserve the flag from desecration and to preserve and protect the loyalty of the citizens of the state to the flag, both of the state and the United States. It is made a crime to desecrate the flag in the manner provided for in the statute, which part reads:

"Or who shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by word or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment for not more than thirty days, or both, in the discretion of the court; and shall also forfeit a penalty, in the discretion of the court, of not more than fifty dollars for each such offense, to be recovered with costs in a civil action or suit, in any court having jurisdiction, and such action or suit may be brought by and in the name of any citizen of this state, and such penalty when collected, less the reasonable cost and expense of action or suit, shall be paid into the treas-



ury of this state; and two or more penalties may be sued for and recovered in the same action or suit."

The legislature also in the Code of 1930, by Section 6544 of the Code, originally required the flag to be displayed either inside or outside of each public school and for the teaching of patriotism. This act was amended by Chapter 59, Laws of 1935, which provides that the flag of the United States shall be displayed at each school building of the state in close proximity to the school building, during all times the weather will permit without damage to the flag, and the trustees of every school shall provide for the flag and its display. Section 2 of this act provides that every school within the state shall arrange a course of study concerning the flag of the United States, which course of study shall include a history of the flag, what it represents, and proper respect therefor

By section 6630 of the Code, Paragraph 13 of said section, it is made the duty of the trustees of each school to provide for the observance of respect for the flag and the teaching of patriotism, etc. These statutes harmonize the Federal Law and regulations on saluting and honoring the flag. See Chapter 435, 56 Statutes 378; U.S.C.A. Title 36, 176 and 177. (Appendix D) (note the statutes mentioned, but not quoted or made an appendix, are cited merely to show intent on the part of the Legislature).

The indictment in this case is made under Section 1, Chapter 178, Laws of 1942, which reads:

"Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally, preach, teach, or disseminate any teach-

ings, creed, theory, or set of alleged principles, orally, or by means of a phonograph, or other contrivance of any kind, or nature, . . . or by the distribution of any sort of literature, or written or printed matter, **designed** and **calculated** to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, . . . or which would incite racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the State of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States, but such imprisonment shall not exceed ten years."

This statute is only one of a number of statutes enacted in 1942 as war measures after war had actually been declared by this government upon Japan, Germany, and Italy. These statutes should be considered in connection with Chapter 178, as showing the purpose to preserve peace, order, safety, provide for common defense and general welfare of the state. The following statutes are merely to show that the Legislature was dealing with a war situation. These companion statutes are:

Chapter 175 of the Laws of 1942 provides rules and regulations of blackouts and enforcements thereof, and imposes severe penalties for violating such law.

Chapter 194, Laws of 1942, is an act authorizing the boards of supervisors in the state to expend funds in connection with any national defense effort or project, and is limited to the duration of the war.

Chapter 177 of the Laws of 1942 is an act entitled:

**"AN ACT TO PROVIDE FOR THE COMMON DEFENSE, THE REGISTRATION OF ALL GUNS, RIFLES, PISTOLS, AND OTHER WEAPONS, OR ARMS, CAPABLE OF BEING USED IN DEFENSE: TO PROVIDE FOR THE REPELLING OF INVASIONS, SUPPRESSING INSURRECTION, REBELLION OR RIOT."**

This is, of course, a war measure, and intended to furnish the peace officers with the information as to where weapons needed for the preservation of peace and safety, and law and order, may be found.

Chapter 183, Laws of 1942, is an act to prevent intentional injury to and interference with property used in connection with war preparation or communications.

Chapter 196 of the Laws of 1942 is an act to authorize the Board of Supervisors wherein an army camp or cantonment is located, either wholly or partially, to employ deputy sheriffs in accord with the discretion of the board and fix salaries therefor. This is a police measure for the protection of the army from disturbers and to protect the public in the enjoyment of peace and quiet. It is a police measure, in time of war, for the public safety.

Chapter 323 of the Laws of 1942 is an act making it unlawful to use force or violence or threats thereof or attempt to prevent any person from engaging in any lawful vocation and providing penalties for the violation thereof; making it unlawful for any person acting in concert with other persons to assemble and prevent or attempt to prevent by force or violence any person from engaging in any lawful vocation and making it unlawful to encourage and aid such unlawful assemblage and providing penalties therefor. This statute is one to guarantee the right to work and

follow lawful vocations of all citizens against organized disturbances and was enacted in furtherance of the national policy of giving to all citizens the right to engage in public works carried on to promote the war efforts of the government. This statute protects negroes and non-union men in securing work.

Chapter 176 of the Laws of 1942 is an act to create protection and safety units, or guard units, for such areas or tracts of land on which are located our munition plants, ship building plants or where munitions or other war materials are being manufactured or ships being built, to prevent sabotage; to provide for the organization of said units; and to define the duties and powers of the same. This is a law protecting by the forces of the state, and rendering aid to the national government in preventing sabotage, injury or destruction to the plants used in the manufacture of war material.

Chapter 186 of the Laws of 1942 creates the defense council, defines their duties, and is designed to take care of the emergency of the war period.

Chapter 102 of the Laws of 1942 is an act appropriating additional moneys to the regular appropriations made in Chapter 84 of the Laws of 1942, to carry out measures deemed necessary for the duration of the war, which act appropriates Five Hundred Thousand Dollars, an amount largely in excess of the usual appropriation.

These companion statutes are cited merely to show the legislature was enacting war measures.

When all of these acts are considered together, it would seem clear, I think, that the legislature was using its foresight to provide for the common defense in time of possible disturbance or violence during the period of the war, and to promote the peace, safety, and welfare of the state during the war, when many

of the male citizens of the state of military age will be called away from home and in the national service. In war time the police powers of the state are enlarged by the necessity growing out of conditions that do arise during the war when the ordinary methods would not be either available or effective.

Chapter 178 of the Laws of 1942 is in no sense an act on the part of the legislature to prevent the proper exercise of religious liberty, and was not aimed at Jehovah's Witnesses. In fact, one of the most drastic bills introduced, of which the present law is a modified form, eliminating many of the drastic features of the original bill, was directed specifically at communism, the Communist party, and the International Communistic organization. Inasmuch as Russia was at war against our enemies, and the activities of Communism had been largely attributed to Russian influences prior to the war, it was thought best to eliminate Communism by name or to the organizations specifically mentioned, and to limit as the present law does, to such acts as would be injurious to the unity and safety of the state and especially of the state and national government in providing against conditions that might easily arise in the state. The legislature had the right to provide for possible contingencies as well as actual existing circumstances. No one can foresee what may happen during the course of the war nor foresee to what desperate extent our efforts may be put to preserve our government and our democratic system of constitutional liberty, founded by the consent of the people and exercised by their representatives. The court knows and the legislature knew that this state has two races of approximately equal numbers. If it should develop that some of our enemies, especially the Japanese should gain a foothold along the shores of the Gulf or Mexico or in ac-

cessible distance to the oil fields of the northeast of Mexico, and in Texas, Louisiana, Oklahoma, and other states, including our own, their efforts would be, very probably, to destroy these oil fields and to incite the colored race to violence and disturbance. It is not pleasant to mention these things, and I am one of those who believe that larger privileges of education and opportunity should be given the negro race. The leaders and best educated of the negroes, as a rule, do not expect or desire social equality, and the white race in the South are against it; but there are possibilities of disturbances growing out of friction in race pride, race prejudices, etc., between the two races. If we should have the war brought to our own shores, it would be natural for our enemies to try to stir up these prejudices and differences and to make a portion of them disloyal to their government. This has been notoriously practiced by the Japanese and other countries of the world, and no doubt there have been many spies traveling through this country, composed as it is of different nationalities and different races, to stir up disloyalty and friction, to weaken our military forces, in efficacy.

The police power of the state extends to all the great public needs as said by the United States Supreme Court in the case of *Noble State Bank v. Haskell*, 219 U. S. 104, 55 L. Ed. 112. See especially the second syllabus: Police power of the state may be used in aid of the national defense as well as the preservation of peace and order within the state limits. The state is a part of the nation and what affects the nation affects the state. The people of the state are a part of the nation and disorder, violence or rebellion in the state may require a part of the national force in the state to maintain order and put down violence



or rebellion when it might be urgently needed elsewhere.

Consequently, Chapter 178, Laws of 1942, (Appendix A) may be justified purely as a police measure. In the case of *Gilbert vs. State of Minnesota*, 254 U. S. 325, 65 L. Ed. 287, it was held that congressional power is not encroached upon by the enactment by a state of an act making it unlawful to teach that men should not enlist in the military forces of the United States, or that citizens of the state should not aid or assist the United States in the prosecution or carrying on of the war on public enemies of the United States. Such act renders a service to the United States and may even be used to preserve the peace of the state. At page 289 of the L. Ed. (254 U. S. at p. 330) of this case, it is said:

"And so with the statute of Minnesota. An army is an instrument of government, a necessity of its power and honor and it may be, of its security. An army, of course, can only be raised and directed by Congress; it neither has the state power, but it has power to regulate the conduct of its citizens, and to restrain the exertion of baleful influences against the promptings of patriotic duty, to the detriment of the welfare of the nation and state. To do so is not to usurp a national power, it is only to render a service to its people, as Nebraska rendered a service to its people when it inhibited the debasement of the flag. . . . The statute, indeed, may be supported as a simple exertion of the police power to preserve the peace of the state. As counsel for the state say: 'The act under consideration does not relate to the raising of armies for the national defense, nor to rules and regulations for the government of those under arms. It is simply a local police measure, aimed to suppress a species of sedi-



tious speech which the legislature of the state has found objectionable. If the legislature has otherwise power to prohibit utterances of the character of those here complained of, the fact that such suppression has some contributory effect on the Federal function of raising armies is quite beside the question." And the state knew the conditions which existed and could have a solicitude for the public peace, and this record justifies it."

See this case in 142 Minn. 485, 171 N. W. 789, showing the character of prohibition involved in that case which is comparable to the language of Section 1 of the present statute. See also *Gitlow vs. New York*, 268 U. S. 652, 69 L. Ed. 1138, in which case a law of the state of New York prohibits the advocacy for the purpose of bringing about the destruction of organized parliamentary government, of mass industrial revolts usurping the functions of municipal government, political mass strikes directed against the parliamentary state and revolutionary mass action for its final destruction, necessarily implies the use of force and violence, and in its essential nature is inherently unlawful in a constitutional government of law and order.

In the third syllabus of this case it is said: "The freedom of speech and of the press, which is secured by the Constitution, does not confer the absolute right to speak or publish without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents the punishment of those who abuse this freedom."

In the fourth syllabus, it is said:

"A state may punish those who abuse the constitutional freedom of speech by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace."

In the fifth syllabus, it is said:

"A state may punish utterances endangering the foundations of organized government, and threatening its overthrow by unlawful means."

In the sixth syllabus, it is said:

"Every presumption must be indulged in favor of the validity of a statute."

In the seventh syllabus, it is said:

"The state is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise authority vested in the state in the public interest."

In the eighth syllabus, it is said:

"That utterances inciting to the overthrow of government bear no casual relation to any substantive evil consummated, attempted, or likely, does not render unconstitutional, as applied to them, a statute making penal utterances inciting to such overthrow by unlawful means."

In the course of the opinion at Page 1145 of the Law Edition Report, 286 U. S. 666, it is said:

"For present purposes we may and do assume that freedom of speech and of the press—which are protected by the 1st Amendment from abridgement by Congress—are among the fundamental personal

rights and 'liberties' protected by the due process clause of the 14th Amendment from impairment by the states. We do not regard the incidental statement in *Prudential Ins. Co. v. Cheek*, 259 U. S. 530, 543, 66 L. Ed. 1044, 1053, 27 A. L. R. 27, 52 Sup. Ct. Rep. 516, that the 14th Amendment imposes no restrictions on the states concerning freedom of speech, as determinative of this question. It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. (Cites many authorities). Reasonably limited, it was said by Story in the passage cited, this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the Republic. That a state in the exercise of its police power, may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question. (Cites many authorities.) Thus it was held by this court in the *Fox Case*, that a state may punish publications advocating and encouraging a breach of its criminal laws; and, in the *Gilbert Case*, that a state may punish utterances teaching or advocating that its citizens should not assist the United States in prosecuting or carrying on war with public enemies. And, for yet more imperative reasons, a state may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own

existence as a constitutional state. Freedom of speech and press, said Story (*supra*), does not protect disturbances of the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government, or to impede or hinder it in the performance of its governmental duties. . . . By enacting the present statute the state has determined, through its legislative body, that utterances advocating the overthrow of organized government by force, violence, and unlawful means, are so inimical to the general welfare, and involve such danger of substantive evil, that they may be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute. (Citing authorities). And the case is to be considered 'in the light of the principle that the state is primarily the judge of regulations required in the interest of public safety and welfare;' and that its police 'statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise interest.' "

In the case of *Whitney v. California*, 274 U. S. 357, 49 S. Ct. 751, 71 L. Ed. 1095, the Supreme Court of the United States, the final judge on the limitation of the power of the state, dealt with the question. In this case Anita Whitney was indicted and convicted in the California court for violation of the statute of that state, and it was held by the Supreme Court:

"A statute providing for punishment of criminal syndicalism does not violate the equal protection clause of the Constitution because its penalties are confined to those who advocate a resort to violent

and unlawful methods as a means of changing industrial and political conditions, without including those who advocate to such methods as a means of maintaining such conditions."

It also held that:

"The protection clause of the Federal Constitution does not take from a state the power to classify in the adoption of police laws, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary."

It also held that:

"One assailing a legislative classification as unconstitutional has the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

"A state may properly direct its legislation against what it deems an existing evil without covering the whole field of possible abuses.

"The freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity to every possible use of language and preventing the punishment of those who abuse their freedom."

It was held that:

"The constitutional right of freedom of speech and of assembly and association is not infringed by a statute providing punishment for one who knowingly becomes a member of, or assists in organizing, an association to advocate, teach or aid and abet the commission of crime or unlawful acts of force, vio-

lence, or terrorism as a means of accomplishing industrial or political changes.

"Every presumption is to be indulged in favor of the validity of a statute."

Without quoting from the opinion at any length, I submit to the Court that this case and others cited cover the present case.

I also desire the Court to consider the questions involved in the *Gitlow vs. New York* case, 234 N. Y. 132, and the statutes there considered, compared to the present statute. When these principles are borne in mind, it seems to me that the constitutionality of the present statute, as a war measure, is completely covered and upheld. I have personally favored the constitutional protection guaranteed to each citizen as fully as anyone else. They safeguard the bills of rights which are dear to me, but they do not warrant anyone destroying the peace and order of the state, or endangering the national safety, when such is brought within the purposes for which the guarantee is made. The liberties secured therein may be reasonably regulated.

As to the definiteness of the statute, I think that is sustained overwhelmingly by the authorities and merely refer the court on that proposition to the notes in 73 A. L. R. 1494, 20 A. L. R. 1355, and 1st A. L. R. 336, and these notes also show the authority which the state has in dealing with propaganda and newspaper comments and public or private speech deemed inimical to the public welfare. I especially wish the Court to take the syllabus in *Ed Sproles et al v. T. Benson, Sheriff*, 286 U. S. 374 52 S. Ct., 581 76 Law Edition 1167. In the third syllabus, it is stated:

"To make scientific precision a criterion of the con-



stitutional power would be to subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to secure."

In the fourth syllabus:

"When the subject lies within the police power of the state, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range or discretion cannot be set aside because compliance is burdensome."

In the eleventh syllabus:

"The requirement of reasonable certainty in statutes does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding."

I desire to call the Court's attention now to cases which I regard as fully establishing the validity of the present statute as against the grounds of freedom of speech, freedom of religion and freedom of public assemblage. See the cases of *Minersville School District et al, v. Walter Gobitis, et al*, 310 U. S. 586, 607, 84 L. Ed. 1375; *George Reynolds v. U. S.* 98 U. S. 145, 25 L. Ed. 244; *McIntosh v. United States*, 283, U. S. 605, 75 L. Ed. 1302; *Schneck v. United States*, 249 U. S. 47, 63 L. Ed. 470, 39 S. C. 247; *Schwimmer vs. United States*, 279 U. S. 644, 49 S. Ct. 644; 73 L. Ed. 889 *Hamilton vs. Regents, et al*, 293 U. S. 245, 55 S. Ct. 197, 79 L. Ed. 343; *Nichols vs. School Board*, 110 A. L. R. 377. 7 N. E. (2d) (Mass.) 577.

I desire to take up the case of *McIntosh v. United States*, 75 L. Ed. 1302, 283 U. S. 605, 635. This was a



case where a Dr. McIntosh, a distinguished educator, had sought to be naturalized as a citizen of the United States but refused to take the oath to defend the United States in case of war unless he approved the justness of the war. Naturalization laws and rules required that the applicant for naturalization should, before he is admitted to citizenship, pledge on oath in open court that he will support the Constitution of the United States and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of which he was before a citizen or subject, and he will support and defend the Constitution and laws of the United States against all enemies, foreign or domestic, and bear true faith and allegiance to the same, and other requirements set out in the opinion. It is also required that the court be satisfied that the applicant securing his residence in the United States has behaved as a man of good moral character, attached to the principles of the Constitution of the United States. The court at page 1306 of 75 L. Ed. p. 616 of 283 U. S. said:

"But the proof of good behavior does not close the inquiry. When does the statute require examination of the applicant and witnesses in open court and under oath, and for what purpose is the government authorized to cross-examine concerning any matter touching or in any way affecting the right of naturalization? Clearly, it would seem, in order that the court and the government, whose power and duty in that respect these provisions take for granted, may discover whether the applicant is fitted for citizenship; and to that end, by actual inquiry, ascertain, among other things, whether he has intelligence and good character;

whether his oath to support and defend the Constitution and laws of the United States, and to bear true faith and allegiance to the same, will be taken without mental reservation or purpose inconsistent therewith; whether his views are compatible with the obligations and duties of American citizenship; whether he will upon his own part observe the laws of the land; whether he is willing to support the government in time of war, as well as in time of peace, and to assist in the defense of the country, not to the extent or in the manner that he may choose, but to such extent and in such manner as he lawfully may be required to do. These, at least, are matters which are of the essence of the statutory requirements, and in respect of which the mind and conscience of the applicant may be pertinent inquiries, as fully as the court, in the exercise of a sound discretion, may conclude it is necessary."

On page 1307 L. Ed. (617 Official Edition) the Court said:

"Upon the preliminary form for petition for naturalization, the following questions, among others, appear:

- '20. Have you read the following oath of allegiance? (which is then quoted).  
Are you willing to take this oath in becoming a citizen?"
- '22. If necessary, are you willing to take up arms in defense of this country?"

In response to the questions designated 20, he answered, 'Yes'. In response to the question designated 22, he answered 'Yes, but I should want to

be free to judge of the necessity.' But in a written memorandum subsequently filed, he amplified these answers as follows: '20 and 22. I am willing to do what I judge to be in the best interests of my country, but only insofar as I can believe that this is not going to be against the best interests of humanity in the long run. I do not undertake to support "my country, right or wrong" in any dispute which may rise, and I am not willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not "take up arms in defense of this country," however "necessary" the war may seem to be to the government of the day.

"It is only in a sense consistent with these statements that I am willing to "support and defend" the government of the United States against all enemies, foreign and domestic. But just because I am not certain that the language of questions 20 and 22 will bear the construction I should have to put upon it in order to be able to answer them in the affirmative, I have to say that I do not know that I can say "Yes" in answer to these two questions.' "

"Upon hearing before the district court on the petition, he explained his position more in detail. He said that he was not a pacifist; that if allowed to interpret the oath for himself he would interpret it as not inconsistent with his position and would take it. He then proceeded to say that he would answer Question 22 in the affirmative only on the understanding that the war was morally justified before he would take up arms in it or give it his moral support. He was ready to give to the United States all the allegiance he ever had given or ever could give to any country, but he could not put allegiance to the government of any country before allegiance

to the will of God. He did not anticipate engaging in any propaganda against the prosecution of a war which the government had already declared and which it considered to be justified; but he preferred not to make any absolute promise at the time of the hearing, because of his ignorance of all the circumstances which might affect his judgment with reference to such a war. He did not question that the government under certain conditions could regulate and restrain the conduct of the individual citizen, even to the extent of imprisonment. He recognized the principle of the submission of the individual citizen to the opinion of the majority in a democratic country; but he did not believe in having his own moral problems solved for him by the majority. The position thus taken was the only one he could take consistently with his moral principles and with what he understood to be the moral principles of Christianity. He recognized, in short, the right of the government to restrain the freedom of the individual for the good of the social whole; but was convinced, on the other hand, that the individual citizen should have the right respectfully to withhold from the government military services (involving as they probably would, the taking of human life) when his best moral judgment would compel him to do so. He was willing to support his country, even to the extent of bearing arms, if asked to do so by the government, in any war which he could regard as morally justified."

The court further said on Page 1309 of the Law Edition (621 Official Ed.):

"There are few finer or more exalted sentiments than those which find expression in opposition to war. Peace is a sweet and holy thing, and war is a

hateful and abominable thing to be avoided by any sacrifice that a free people can make. But thus far mankind has been unable to devise any method of indefinitely prolonging the one or entirely abolishing the other; and, unfortunately, there is nothing which seems to afford positive ground for thinking that the near future will witness the beginning of the reign of perpetual peace for which good men and women everywhere never cease to pray. The Constitution, therefore, wisely contemplating the ever present possibility of war, declares that one of its purposes is to 'provide for the common defense.' In express terms Congress is empowered 'to declare war' which necessarily connotes the plenary power to wage war with all the force necessary to make it effective; and 'to raise \* \* \* armies,' which necessarily connotes the like power to say who shall serve in them and in what way.

"From its very nature the war power, when necessity calls for its exercise, tolerates no qualifications or limitations unless found in the Constitution or in applicable principles of international law. In the words of John Quincy Adams, "This power is tremendous; it is strictly constitutional; but it breaks down every barrier so anxiously erected for the protection of liberty, property and of life."

"To the end that war may not result in defeat, freedom of speech may, by act of Congress, be curtailed or denied so that the morale of the people and the spirit of the army may not be broken by seditious utterances; freedom of the press curtailed to preserve our military plans and movements from the knowledge of the enemy; deserters and spies put to death without indictment or trial by jury; ships and supplies requisitioned; property of alien enemies, theretofore under the protection of the

Constitution, seized without process and converted to the public use without compensation and without due process of law in the ordinary sense of that term; prices of food and other necessities of life fixed or regulated; railways taken over and operated by the government, and other drastic powers, wholly inadmissible in time of peace, exercised to meet the emergencies of war."

The court then proceeded to say that these were illustrations of the breadth of the war power, and on the same page said:

"Thus it is said in the carefully prepared brief of respondent:

"To demand from an alien who desires to be naturalized an unqualified promise to bear arms in every war that may be declared, despite the fact that he may have conscientious religious scruples against doing so in some hypothetical future war, would mean that such an alien would come into our citizenry on an unequal footing with the native born, and that he would be forced as the price of citizenship, to forego a privilege enjoyed by others. That is the manifest result of the fixed principle of our Constitution zealously guarded by our law, that a citizen cannot be forced and need not bear arms in a war if he has conscientious religious scruples against doing so.' "

"This, if it means what it seems to say, is an astonishing statement. Of course, there is no such principle of the Constitution, fixed or otherwise. The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provisions, express or implied; but because, and only because, it has accorded with the policy



of Congress thus to relieve him. The alien, when he becomes a naturalized citizen, acquires, with one exception, every right possessed under the Constitution, by those citizens who are native born (*Luria v. U. S.*); but he acquires no more. The privilege of the native born conscientious objector to avoid bearing arms comes not from the Constitution, but from the acts of Congress. That body may grant or withhold the exemption as in its wisdom it sees fit; and if it withheld, the native-born conscientious objector cannot successfully assert the privilege. No other conclusion is compatible with the well-nigh limitless extent of the war powers as above illustrated, which include, by necessary implication, the power in the last extremity, to compel the armed service of any citizen in the land, without regard to his objections or his views in respect of the justice or morality of the particular war or war in general."

In this case the court reviewed extensively the war powers, and shows that the Bill of Rights in time of public danger is regulated and limited and it may be regulated and limited even in peace times in any reasonable way.

Every right, constitutional or otherwise, is given as a guaranty, subject to the reasonable regulation by the legislative authority, to secure the safety, health and general welfare. In other words, such rights are not absolute rights. In every organized government the public rights are to receive due consideration and individual rights are granted and secured in view of the duty of the government to protect the whole people in all reasonable ways. As pointed out in this case the war powers of government come into play when war is declared or imminent, and has such power as



may be necessary when respectfully exercised to safeguard the country from invasion or destruction.

**Chapter 178 of the Laws of 1942 (Appendix A) was not directed or intended to be applied to mere religious fields or religious opinions and only applied to any religious organization or any other organization when the members thereof brought themselves within the scope of the statute. In other words, the statute is not directed against religion, as such, but it is designed to prevent doing the prohibited things under the guise of religious belief or religious conviction.**

In the case of *Reynolds v. United States*, 98 U. S. 145-148 25 L. Ed. 244, the court held that religious liberty or constitutional guaranty of the freedom of liberty and freedom of speech did not protect the person against the operation of police laws, or protect against acts that were deemed detrimental to the general welfare or public morals. The court in the course of its opinion in that case said:

"The word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed?

"Before the adoption of the Constitution, attempts were made in some of the Colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they

could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the states, but seemed at last to culminate in Virginia. In 1784, the House of Delegates of that state having under consideration 'A bill establishing provisions for teachers of the Christian religion' postponed it until the next session, and directed that the bill should be published and distributed, and that the people be requested 'to signify their opinion respecting the adoption of such a bill at the next session of the Assembly.' This brought out a determined opposition. Among others, Mr. Madison prepared a 'Memorial and Remonstrance' which was widely circulated and signed, and in which he demonstrated 'that religion or the duty we owe the Creator,' was not within the cognizance of civil government. (Semple's Virginia Baptist, Appendix.) At the next session the proposed bill was not only defeated, but another, 'for establishing religious freedom' drafted by Mr. Jefferson, 1 Jeff. Works, 43; 2 Howison, Hist. of Va. was passed. In the preamble of this Act, 12 Hen. Stat., 84, religious freedom is defined; and after a recital 'That to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which destroys all religious liberty,' it is declared 'that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.' In these two sentences is found the true distinction between

what properly belongs to the Church and what to the State.

"In a little more than a year after the passage of this statute the convention met which prepared the Constitution of the United States. Of this convention Mr. Jefferson was not a member, he being then absent as Minister to France. As soon as he saw a draft of the Constitution proposed for adoption, he, in a letter to a friend, expressed his disappointment at the absence of an express declaration insuring the freedom of religion, 2 Jeff. Works, 355, but was willing to accept it as it was, trusting that the good sense and honest intentions of the people would bring about the necessary alterations. 1 Jeff. Works, 79. Five of the States, while adopting the Constitution, proposed amendments. Three, New Hampshire, New York and Virginia, included in one form or another a declaration of religious freedom in the changes they desired to have made, as did also North Carolina, where the convention at first declined to ratify the Constitution until the proposed amendments were acted upon. Accordingly, at the first session of the first Congress the amendment now under consideration was proposed with others by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted. Mr. Jefferson afterwards in reply to an address to him by a committee of the Danbury Baptist Association, 8 Jeff. Works 113, took occasion to say: 'Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only, and not opinion, I contemplate with sovereign reverence that act of the whole American people which declared that their Legislature should 'make

no law respecting an establishment of religion or prohibiting the free exercise thereof.' Thus building a wall of separation between Church and State. Adhering to this expression of the Supreme will of the Nation in behalf of the rights of conscience, I shall see, with sincere satisfaction, the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.' Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus accrued. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order. . . .

"Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pyre of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

"So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in

effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

It will be seen from this case that freedom of religion does not mean that a person can shield himself by mere religious belief from the consequences of the criminal statutes designed to promote public safety, health, etc. It will be clearly impossible for any government to exist and maintain laws for the common good of the people if any person who happened to have a contrary belief could defeat them on the ground of religious belief. There must be in every government somebody to decide on the meaning and limitations of constitutional provisions and restrictions; and in our government the courts have this power of decision and the judgment of the court as to the scope of the constitutional provision is binding upon the citizen, and citizens, aliens, and the departments of government must yield private opinion to the authority of the courts.

In the case at bar the defendants place their judgment against that of the law as declared by the court.

In the case of *Davis vs. Beason*, 133 U. S. 333-348 33 L. Ed. 637, the court had under consideration a prosecution by the Territory of Idaho for the offense of bigamy denounced by the Federal statute while Idaho was under territorial government, and the court declared that the punitive power of the government for acts recognized by the general consent of the Christian world in modern times as proper matters for prohibitory legislation cannot be suspended in order that the tenets of a religious sect encouraging crime may be carried out without hindrance. In the course of the opinion by Mr. Justice Field, the court said:

"To extend exemption from punishment for such crimes would be to shock the moral judgment of the community. To call their advocacy a tenet of religion is to offend the common sense of mankind. If they are crimes, then to teach, advise and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal and proper subjects of punishment, as aiding and abetting crime are in all other cases.

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<sup>147</sup>The first amendment to the Constitution in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted by the governments of Europe for many ages, to compel parties to conform in their religious beliefs and modes of worship to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons and enforce an outward conformity to a prescribed standard, led to the adoption of the Amendment in question. It was never intended or supposed that the Amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society. With man's relations to his Maker and the obligations he may



think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation. There have been sects which denied as a part of their religious tenets that there should be any marriage tie, and advocated promiscuous intercourse of the sexes as prompted by the passions of their members, and history discloses the fact that the necessity of human sacrifices, on special occasions, has been a tenet of many sects. Should a sect of either of these kind ever find its way into this country, swift punishment would follow the carrying into effect of its doctrines, and no heed would be given to the pretense that, as religious beliefs, their supporters could be protected in their exercise of the Constitution of the United States. Probably never before in the history of this country has it been seriously contended that the whole punitive power of the government, for acts recognized by the general consent of the Christian world in modern times as proper matters for prohibitory legislation, must be suspended in order that the tenets of a religious sect encouraging crime may be carried out without hindrance."

In the case of *Minersville School District v. Gobitis*, 84 L. Ed. 1375, 310 U. S. 586, the court had under consideration the question of whether it was within the power of a state through its lawmaking powers ev-



everywhere vested in the state to compel children attending the public schools to salute the flag on condition of remaining in the school, the court said:

"The requirement of participation by pupils in public schools in the ceremony of saluting the national flag does not, in the case of a pupil who refuses participation upon sincere religious grounds, infringe, without due process of law, the liberty guaranteed by the Fourteenth Amendment."

"In determining the scope of the constitutional guaranty of religious freedom, every possible leeway should be given to the claims of religious faith."

In the court of the opinion, on page 1379, the court said:

"Nor does the freedom of speech assured by Due Process move in a more absolute circle of immunity than that enjoyed by religious freedom. Even if it were assumed that freedom of speech goes beyond the historic concept of full opportunity to utter and to disseminate views, however heretical or offensive to dominant opinion, and includes freedom from conveying what may be deemed and implied but rejected affirmation, the question remains whether school children, like the Gobitis children, must be excused from conduct required of all the other children in the promotion of national cohesion. We are dealing with an interest inferior to none in the hierarchy of legal values. National unity is the basis of national security. To deny the legislature the right to select appropriate means for its attainment presents a totally different order of problem from that of the propriety of subordi-

nating the possible ugliness of littered streets to the free expression of opinion through distribution of handbills. Compare *Schneider v. Irvington*, 308 U. S. 147, ante., 84 L. Ed. 155, 60 S. Ct. 146."

"Unlike the instances we have cited, the case before us is not concerned with an exertion of legislative power for the promotion of some specific need or interest of secular society—the protection of the family, the promotion of health, the common defense, the raising of public revenues to defray the cost of government. But all these specific activities of government pre-suppose the existence of an organized political society. **The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. 'We live by symbols.' The flag is the symbol of our national unity, transcending all internal differences however large, within the framework of the Constitution. This court has had occasion to say that ' . . . the flag is the symbol of the Nation's power, the emblem of freedom in its truest, best sense . . . it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression.'** *Halter v. Nebraska*, 205 U. S. 34, 46, 51 L. Ed. 696, 761, 27 S. Ct. 419, 10 Ann. Cas. 525, affirming 74 Nebr. 757." \* \* \* (Emphasis supplied).

"The preciousness of the family relation, the

authority and independence which give dignity to parenthood, indeed the enjoyment of all freedom pre-suppose the kind ordered society which is summarized by our flag. A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties. That is to say the process may be utilized so long as men's right to believe as they please, to win others to his way of belief, and their right to assemble in their chosen places of worship for the devotional ceremonies of their faith, are all fully respected."

This case seems to me to fully sustain the statute in the present case. In construing the statute and measuring the government power which is here challenged, the conditions existing in the state which brought forth the legislation, must be borne in mind.

Most of us are familiar with the history of the conditions that existed in this state following the Civil War when so much disturbance of domestic tranquility took place due to the fact that there were two races in the state; and to the fact that persons coming from other sections of the country undertook to use one part of the population to exploit and oppress the other part and the mischief that resulted therefrom. There are now two races of approximately equal numbers in this state which have since 1890 been dwelling in relative peace and harmony. But having two different races living in the same country and in constant contact with each other and each having more or less certain race prejudice and race pride, it was deemed wise to prohibit, during the period of

the war, any effort to stir up prejudice and antagonism that would likely result in violence and possible disloyalty to the welfare of the country if stirred up by influences which always, in time of war, seek to promote discord and distrust to the end that evil may divide the population. This is a possible menace and exists in spite of the best efforts of the wise men of both races to keep down friction and trouble. It is well known to most men in Mississippi that agents of foreign governments, and especially Germany and Russia, were trying to promote dissatisfaction with our form of government since the outbreak of war in Europe before we took any part in the European affairs and before war was declared on us. This propaganda and hostile efforts to divide our people and breed dissatisfaction with the form and principle of our government was known when our Legislature met in 1938 and 1940; and yet no statute was enacted by either session, because we thought we could rely on the peace-time methods of discussion and persuasion. But when war was declared upon us, our legislature recognized the need to prepare in every possible legal way to meet conditions that might and probably would meet us in our effort to preserve our democratic institutions which provide "Liberty and Justice for All," which our flag symbolizes. See, further on this point my brief, *Cummings v. State*, a companion case to this.

In reference to the contention of appellants that the statute is void because Congress has taken over the field of control as to the use of the flag, I desire to say that this position is unsound. The states have power to legislate upon the subject, as well as the National Government. If the United States fails to legislate, then, of course, the States may, but I submit that both governments may legislate on it. The same

act may be made an offense against each government. See *United States v. Lanza*, 260 U. S. 377, 67 L. Ed. 314, 43 St. Ct. 141; *Herbert v. La.*, 272 U. S. 312, 71 L. Ed. 270, 47 S. Ct. 103; Note to 16 A. L. R. 1231; Note to 22 A. L. R. 1551; Note to 10 A. L. R. 1587; *Winslett v. State*, 22 Ala. App. 480, 117 So. 5; *Gray v. United States* (C.A.A. 8th) 14 Fed. (2nd) 366; *State v. Hosmer*, 144 Minn. 342; *Wilson v. Jersey City*, 109 Atl. 364; *Mass. v. Nickerson*, 128 N. E. 273; 10 A. L. R. 1568; *Guerra v. Vt.*, 110 Atl. 224, 10 A. L. R. 1560, syllabus 5 and 6. In this record I cite, and quote from the case of *Halter v. Nebraska*, 205 U. S. 34, 51 L. Ed. 696, 27 S. Ct. 410, 10 Ann. Cas. 525, quoting from the United States Supreme Court:

"It may be well at the outset to say that Congress has established no regulation as to the use of the flag, except that in the act approved February 20th, 1905, authorizing the registration of trade-marks in commerce with foreign nations and among the states, it was provided that no mark shall be refused as a trade-mark on account of its nature 'unless such mark . . . consists of or comprises the flag or coat of arms or other insignia of the United States, or any simulation thereof, or of any state or municipality, or of any foreign nation.' 33 Stat. at L. 724, Sec. 5, Chap. 592, U. S. Comp. Stat. Supp. 1905, p. 670.

"The importance of the questions of constitutional law thus raised will be recognized when it is remembered that more than half of the states of the Union have enacted statutes substantially similar, in their general scope, to the Nebraska statute. That fact is one of such significance as to require us to pause before reaching the conclusion that a majority of the states have, in their legislation, vio-

lated the Constitution of the United States. Our attention is called to two cases in which the constitutionality of such an enactment has been denied, *Ruhrstrat v. People*, 185 Ill. 133, 49 L. R. A. 181, 76 Am. St. Rep. 30, 57 N. E. 41; *People ex rel McPike v. Van De Carr*, 178 N. Y. 425, 66 L. R. A. 189, 102 Am. St. Rep. 516, 70 N. E. 965. In the Illinois case the statute was held to be unconstitutional as depriving a citizen of the United States of the right of exercising a privilege impliedly, if not expressly, granted by the Federal Constitution, as duly discriminating and partial in its character, and as infringing the personal liberty guaranteed by the state and Federal Constitutions. In the other cases, decided by the court of appeals of New York, the statute, in its application to articles manufactured and in existence when it went into operation, was held to be in violation of the Federal Constitution, as depriving the owner of property without due process of law, and as taking private property for public use without just compensation.

"In our consideration of the questions presented we must not overlook certain principles of constitutional construction, long ago established and steadily adhered to, which preclude a judicial tribunal from holding a legislative enactment, Federal or State, unconstitutional and void, unless it be manifestly so. Another vital principle is that, except as restrained by its own fundamental law, or by the supreme law of the land, a state possesses all legislative power consistent with a republican form of government; therefore each state, when not thus restrained, and so far as this court is concerned, may, by legislation, provide not only for the health, morale, and safety of its people, but for the com-



mon good, as involved in the well-being, peace, happiness and prosperity of the people.

"Guided by these principles, it would seem difficult to hold that the statute of Nebraska, in forbidding the use of the flag of the United States for purposes of mere advertisement, infringes any right protected by the Constitution of the United States, or that it relates to a subject exclusively committed to the national government. From the earliest periods in the history of the human race, banners, standards, and ensigns have been adopted as symbols of the power and history of the peoples who bore them. It is not then remarkable that the American people, acting through the legislative branch of the government, early in their history, prescribed as symbolical of the existence and sovereignty of the nation. Indeed, it would have been extraordinary if the government had started this country upon its marvelous career without giving it a flag to be recognized as the emblem of the American Republic. For that flag every true American has not simply an appreciation but a deep affection. No American, nor any foreign-born person who enjoys the privileges of American citizenship, ever looks upon it without taking pride in the fact that he lives under this free government. Hence, it has often occurred that insults to a flag have been the cause of war, and indignities put upon it, in the presence of those who revere it, have often been resented and sometimes punished on the spot.

"It may be said that, as the flag is an emblem of national sovereignty, it was for Congress alone, by appropriate legislation, to prohibit its use for illegitimate purposes. We cannot yield to this view. If Congress has not chosen to legislate on this sub-



ject, and if an enactment by it would supersede state laws of like character, it does not follow that, in the absence of national legislation, the state is without power to act. There are matters which, by legislation, may be brought within the exclusive control of the general government, but over which, in the absence of national legislation, the state may exert some control in the interest of its own people. For instance, it is well established that, in the absence of legislation by Congress, a state may, by different methods, improve and protect by navigation of a waterway of the United States, wholly within the boundary of such states. So, a state may exert its power to strengthen the bonds of the Union, and therefore, to that end may encourage patriotism and love of country among its people. When by its legislation, the state encourages a feeling of patriotism towards the nation, it necessarily encourages a like feeling toward the state. One who loves the Union will love the state in which he resides, and love both of the common country and of the state will diminish in proportion as respect for the flag is weakened. Therefore, a state will be wanting in care for the well-being of its people if it ignores the fact that they regard the flag as a symbol of their country's power and prestige, and will be impatient if any open disrespect is shown toward it. By the statute in question the state has in substance declared that no one subject to its jurisdiction shall use the flag for purposes of trade and traffic, a purpose wholly foreign to that for which it was provided by the nation. Such a use tends to degrade and cheapen the flag in the estimation of the people, as well as to defeat the object of maintaining it as an emblem of national power and national honor. And we cannot

hold that any privilege of American citizenship or that any right of personal liberty is violated by a state enactment forbidding the flag to be used as an advertisement on a bottle of beer. It is familiar law that even the privileges of citizenship and the rights inhering in personal liberty are subject, in their employment, to such reasonable restraints as may be required for the general good. Nor can we hold that anyone has a right of property which is violated by such an enactment as the one in question. If it be said that there is a right of property in the tangible thing upon which a representation of the flag has been placed, the answer is that such representative which, in itself, cannot belong, as property, to an individual, has been placed on such thing in violation of laws and subject to the power of government, to prohibit the use for purposes of advertisement."

See also the opinion of the Nebraska Supreme Court in case note in 7 L. R. A. (NS) at page 1079; also reported in 121 Ann. St. at P. 754. See also *Commonwealth of Mass. v. Sherman Mfg. Co.*, 4 Ann. Cas. 268, 189 Mass. 76, and case note at page 270 Ann. Cas. See also the state's power to legislate, 24 New Fed. Digest 72, Key No. 5. *Near v. Minnesota*, 283 N. S. 697, 51 S. Ct. 625, 75 L. 1357. The Federal Flag Salute statute, Chapter 435, 56 Statutes 380, U. S. Ca., Title 36 Sec. 171-178 and the State's statute here involved are not antagonistic and both operate.

We are now in a war period, and the cases already cited show that what may be done in time of peace may often be prohibitive in time of war when there is necessity of such matters. See *Nichols v. School Board*, 7 N. E. (2nd) 577, 110 A. L. R. 377, and case note. See Appendices A, B, C, and D.

I submit that the war situation calls for the upholding of the act of the Legislature.

Respectfully submitted,

*Greer L. Kim*

ATTORNEY GENERAL

*Geo H Ethridge*

ASSISTANT ATTORNEY GENERAL

### C E R T I F I C A T E

I, Geo. H. Ethridge, Assistant Attorney General, in and for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true copy of the above and foregoing brief to Honorable Hayden Covington, Attorney of Record for the Appellant, at his post office address at 117 Adams Street, Brooklyn, New York.

This the APR 1 day of 1943.

*Geo H Ethridge*

ASSISTANT ATTORNEY GENERAL



## APPENDIX "A"

## Chapter 178, Laws of 1942:

Section 1. That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatred, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag, or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

\* \* \*

Section 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

## APPENDIX "B"

## Chapter 155, Laws of 1942:

Section 1. \* \* \*, That all boards of trustees of tax supported free public schools and all other state supported schools of the state of Mississippi, are authorized and hereby directed to instruct and require teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once a week during the school year. The oath of allegiance required is as follows:

"I PLEDGE ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA, AND TO THE REPUBLIC FOR WHICH IT STANDS, ONE NATION, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL."

Section 2. That the state superintendent of education and through him the county superintendents of education shall acquaint all boards of trustees of free public schools with the provisions of this act and see that same are complied with as one of the duties of said trustees.

Section 3. That this act will in no way conflict with or diminish the authority or duties of any board of trustees or school officials in regard to the teachings of citizenship, patriotism, Americanism, or respect for the flag as required by section 6630, section 6544 or other sections of the 1930 Mississippi code or supplements thereto. This act merely places an additional duty on the above mentioned authorities.

## APPENDIX "C"

## Chapter 59, Laws of 1935:

\* \* \*

Section 1. \* \* \* That section 6544 of the Mississippi Code of 1930 be and the same is hereby amended so as to read as follows:

"Section 6544. The flag of the United States shall be displayed at every school building in the state in close proximity to the school building by being hoisted on a pole not less than thirty feet high, during all times the weather will permit without damage to the flag, and the trustees of every school building shall provide for the flag and its display.

Section 2. That every school within the state shall arrange a course of study concerning the flag of the United States, which said course of study shall include a history of the flag and what it represents, and the proper respect therefor.



## APPENDIX "D"

U.S.C.A. Anno. 1942 Supplement, Sections 176-177, 56 Statutes 379, Chapter 435, Sections 4 and 5:

**Section 176.** No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, state flags, and organization or institutional flags are to be dipped as a mark of honor.

(a) The flag should never be displayed with the Union down save as a signal of dire distress.

(b) The flag should never touch anything beneath it, such as the ground, the floor, water or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

(d) The flag should never be used as drapery of any sort whatsoever, never fastened, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general.

(e) The flag should never be fastened, displayed, used or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

(j) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning. June 22, 1942, c. 435, Stat. 379.

Section 177. During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in a review, all persons present should face the flag, stand at attention, and salute. Those present in uniform should render the right-hand salute. When not in uniform, men should remove the headdress with the right hand holding it at the left shoulder, the hand being over the heart. Men without hats merely stand at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes. June 22, 1942, c. 435, Sec. 5, 56 Stat. 380.

## APPENDIX "E"

From the Bill of Rights Review, Fall No. 1941, at page 152, entitled "OUR FLAG. ITS SIGNIFICANCE," reading as follows:

"Our Flag! The most beautiful in design and symbolism in all the world. As it floats out into space, caressed by the breezes that blow, it symbolizes a glorious delivery from the oppression and suffering back of the Colonies; back of the Declaration of Independence; and back of the Constitution which moulded into form our great Nation, known to all the world as the United States of America.

"It stands as the Emblem of Religious and Civil Liberties.

"To pledge allegiance to that flag and to the Republic for which it stands, in no manner whatsoever transcends one's religious liberty.

"Religious liberty is one of the most important, if not the very first motive and objective of all the suffering and deprivations endured in order to obtain that freedom.

"We reverence the Bible as the Word of God, but we do not worship it. It teaches us about God as our Creator and the Heavenly Father, who loves and cares for His own.

"We do not reverence the flag in the same sense that we reverence Deity. We salute, honor and respect our flag as the emblem of all that entered into the Birth of our Nation, and of the very foundation upon which our Religious and Civil Liberties rest. It stands for that which secured and protects our

Religious Liberty, and that in itself is a recognition that one's Religious Liberty is above all else.

"In countries where all liberty has been taken away from the people, they are made to appreciate what it means to have a flag which really stands for something; which insures the right to worship God unmolested. Let us ever remember, however, that our flag is in no sense whatsoever an image to be worshipped; nor is it a likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; and to salute that flag in a beautiful patriotic gesture is in no sense a bowing down to or worshipping it or that for which it stands.

"To respect our Flag and to salute it, as I confidently believe all true Americans are instinctively glad to do and to pledge allegiance to the Republic for which it stands, comes from a noble human nature and citizenship."

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CHARLES ELWELL

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1942

Nos. 826, 827, 828

RALPH E. TAYLOR, *Appellant*,

*v.*

STATE OF MISSISSIPPI, *Appellee*.

CLEM CUMMINGS, *Appellant*,

*v.*

THE STATE OF MISSISSIPPI, *Appellee*.

BETTY BENOIT, *Appellant*,

*v.*

THE STATE OF MISSISSIPPI, *Appellee*.

**BRIEF FOR AMERICAN CIVIL LIBERTIES UNION,  
AMICUS CURIAE**

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Liberties Union, Amicus Curiae.*

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---

**BRIEF FOR AMERICAN CIVIL LIBERTIES UNION,  
AMICUS CURIAE**

**Why the American Civil Liberties Union  
Files this Brief**

The American Civil Liberties Union is a non-partisan, non-sectarian organization, national in scope, with members in the State of Mississippi. Its purpose is to defend

the fundamental liberties guaranteed by the Bill of Rights to all Americans, regardless of creed, class or color.

Most persuasive, we think, is the language used by the Court of Appeals of New York, in *People v. Barber* (1943), 289 N. Y. 378, 386, a case involving also, as does this at bar, members of that small minority known as Jehovah's Witnesses:

"It may seem to some that appellant's activities were of such a character that, at this critical period in world history, the Courts and the Bar need not be particularly concerned with their repression. But, if appellant's activities involved the exercise by him of fundamental rights guaranteed by the Federal and State Constitutions, the violation of those rights cannot be disregarded as of trivial consequence. Each case of denial of rights to an individual or to a small minority may seem to be relatively unimportant, but we know now, more surely than ever before, that callousness to the rights of individuals and minorities leads to barbarism and the destruction of the essential values of civilized life".

We believe that unwarranted violation has here been done not only to the principle that "our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities however unpopular and unorthodox those views may be" (dissenting opinion, *Jones v. City of Opelika*, 316 U. S. 584, 623), but also to the principle that "we do not lose our right to condemn either measures or men because the country is at war." (*Frohwerk v. United States*, 249 U. S. 204, 208.)

Hence the submission of this brief *amicus curiae*.

## **The Statute and Charges Here Involved**

The convictions in all three of these cases are based on the same statute, Chapter 178, Mississippi Laws of 1942, page 211, set forth in the dissenting opinion of Judge Anderson\* (R. 178).

In all three cases, also, the offenses are identical, in that in each the allegedly criminal propaganda was characterized as (R. 7),

“designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States of America \* \* \*”,

with additional specific words by the Taylors, not charged against the others, to the effect that the Taylors also said “It is wrong for the President to send the army across for they are just being shot down for nothing”.

Hence, the same statute, and except as just noted, the same charges being common to all the convictions, conciseness may be served by discussing all the questions involved in one brief rather than in three.

## **The Issues**

So as to aid easily to grasp the issues here involved, we set forth in full the section of the statute under which all the convictions here were obtained:

“SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That any person who individually, or as a member of any organization,

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\* All “R” (Record) references are to the Taylor record only.

association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States, or who gives information as to the military operations, or plants of defense or military secrets of the nation or this State, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the State of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years”.

We raise no issue with the one small clause of the above statute which forbids the specific, and clearly reprehensible *act* of giving “information as to the military operations . . . of the nation or of this State . . .”.

Any question here as to this one specific clause is academic in any event as none of the indictments here in question makes any allegation charging the giving of “information as to military operations”.

Thus, granting in full the verity of the allegations of the three indictments at bar drawn under this statute, the question that forces itself to the fore is whether a statute as egregiously repressive as this, loosely and amorphously worded as it is, ought to be allowed to stand.

More specifically, perhaps, the issues, from the civil liberties point of view, that most profitably would serve to peg discussion, are:

1. Does not this statute, in the sweeping generalities of its repressions, as here applied, go further than any other enactment which this Court has ever permitted to stand?

2. Is not this statute so loose and vague in its wording as to render it an unpredictable and enveloping "dragnet which may enmesh anyone who agitates for a change" of policy in wartime. *Hernon v. Lowry*, 301 U. S. 242? (Even the affirming opinion below conceded that in peace-time this statute would be "unconstitutional", R. 145.)

3. Has not this statute, repressive, loose and vague as it is, when applied as it has been to these appellants at bar, unjustifiably violated freedom of speech and press, and freedom of religious conscience?

## POINT I

**There can be found no case decided by this Court "where an expression of personal opinion, short of the advocacy of disobedience to existing law or of the violent overthrow of our Government, has been the basis of a successful prosecution." (See dissenting opinion below R. 171)**

We shall, in our discussion, use the term "repression" not as a characterization of opprobrium, but simply as a convenient designation of the right that this Court has held the State may take unto itself to

“punish those who abuse this freedom (of speech) by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace or endanger the foundations of organized government and threaten its overthrow by unlawful means • • •”. (*Whitney v. California*, 274 U. S. 357, 371, or *Gitlow v. New York*, 268 U. S. 652, 667.)

Of course, content though we are on these appeals, and for these appeals only, to consider this statement of the law as a foreclosed issue, it still remains true that the question is ever one “of proximity and degree” (*Schenck v. United States*, 249 U. S. 47, 52).

But it is because we think that we can show that these convictions are based on a “degree” of repression far beyond that ever allowed by this Court, that we have no hesitation in adopting as a premise of discussion for these appeals only, the rule expounded by the majority opinions in the *Gitlow* and *Whitney* cases—and this despite the vigorous dissents in each of these cases by Justices Holmes and Brandeis.

And this despite the fact again, that the rule abstractly stated as above has time and again, in its application, been vigorously questioned by unweakening dissent in this very Court (*Abrams v. United States*, 250 U. S. 616; *Milwaukee Publishers Association v. Burleson*; 255 U. S. 407; *Burns v. United States*, 274 U. S. 328; *United States v. Schwimmer*, 279 U. S. 644; *United States v. Macintosh*, 283 U. S. 589), and despite the fact that time and again, the rule, by indeed the majority of this Court, has been refused application at all (e.g. *Fiske v. Kansas*, 274 U. S. 380; *Stromberg v. California*, 283 U. S. 359; *DeJonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 342; *Bridges v. California*, 314 U. S. 52).



We do not wish to be understood as approving either the conclusion or the reasoning sustaining them reached by this Court in the *Abrams*, *Burns*, *Gitlow*, *Macintosh*, *Milwaukee Publishers Association*, *Schwimmer*, and *Whitney* cases, cited above. We are merely arguing that had as those cases may be from the point of view we take for the protection of civil liberties, the Mississippi Statute here goes far beyond what even those cases held to be justifiable repression of or penalty for the holding of beliefs or the communication of ideas.

It is because, therefore, it is ever a "question of proximity and degree", and because we agree that "it is useless to define free speech by talk about rights" (*Chafee, Freedom of Speech in War Time*, 32 Har. L. R. 932, 957), that we propose, by inductive examination of this Court's holdings relied on by the affirming opinion below, to show that the degree of repression here urged by the State of Mississippi goes well beyond anything ever allowed by this Court before, and ought therefore to be thrown back.

**A. This Court's holdings in the syndicalism cases do not justify the degree of repression enacted by the statute here in question.**

That in the discussion of these appeals, we are in a realm of conflicting social policies where citations of authority, even less hiddenly than usual, are rationalizations supporting choice, rather than reasons determining "where choice shall fall", is hardly open to penetrating debate (*Cardozo, Nature of the Judicial Process*, p. 12).

Nevertheless it remains of value to show by a case—by—case scrutiny, that even the holdings of this Court, summoned by the Court below to justify its conclusion, fall short of buttressing the statute here in question or these convictions obtained under them.

Thus, *Fox v. Washington*, 236 U. S. 273, the very first decision of this Court cited by the affirming opinion below, while itself not a case involving a syndicalism statute, nevertheless is a case which vividly illumines one of the chief differences between the statute at bar and the syndicalism statute cases relied on in the affirming opinion below.

For in the *Washington* case, the statute under consideration was a specifically worded one, penalizing "a tendency to encourage or incite the commission of any crime, breach of the peace or act of violence", which was read by this Court "as confined to encouraging an actual breach of the law" (236 U. S. p. 277).

How different this *Washington* statute, therefore unwhipped by this Court, from the statute at bar which penalizes propaganda "designed and calculated"—not to punish "an overt breach and technically criminal act" (236 U. S. p. 277)—but to punish the large, undefinable and amorphous conduct of encouraging "disloyalty to the government of the United States", or "the cause of the enemies of the United States. \* \* \*"

To understand but one of the reasons why the *Washington* statute—and the syndicalism statutes—could be permitted to stand, while this at bar must be stricken down, it is but necessary to hark back to the words of this Court in *United States v. Cohen Grocery Co.*, 255 U. S. 81, speaking of a similarly vaguely worded statute (p. 89):

"Observe that the section forbids no definite or specific act".

And what is the "definite or specific act" interdicted by the statute here in question?

Preaching "disloyalty", or advocating "the cause of the enemies of the United States"?

Who will define "disloyalty"—or "the cause of the enemies of the United States"? Any jury of twelve—guided by the notions of any court or prosecutor to what is "disloyal" and what is not?

Is it "disloyal" to have condemned cooperation with Darlan—or to denounce having any truck with Franco—or for that matter, to decry a war which allies us with the "godless" state of Russia, or with an England allegedly still rampantly imperialist?

And is it advocating "the cause of the enemies of the United States" "to cry aloud that our anti-submarine campaign is being bungled, or that we ought to open a "real" second front now—or that we ought to make peace now before communism takes over all of Europe—or to advocate any one or more of dozens of conflicting policies, all raging at the moment, and all of which bear directly on government policy and prosecution of the war?

To sympathize with Rabbi Ben Ezra in his plaint.

"Now who shall arbitrate,  
 Ten men love what I hate,  
 Shun what I follow, slight what I receive;  
 Ten who in ears and eyes,  
 Match me: We all surmise;  
 They this thing, and I that;  
 Whom shall my soul believe" • • •

is not to abandon all hope of any reasonably objective standard of ascertainable guilt (see *Schenck v. United States*, 249 U. S. 47).

But certainly a statute which attempts to do no less than punish "disloyalty" without defining it, or punish advocacy of "the cause of the enemies of the United

States" without delineating it, is a statute so amorphous, so unrestrictive, and so enveloping that, just as said by this Court in *Herndon v. Lowry*, 301 U. S. 242, 263, it is a statute which "amounts merely to a dragnet which may enmesh anyone who agitates for a change" of war policy.

The statute in question here ought, therefore, to be stricken down (see dissenting opinion below of Judge Anderson, R. 171), *United States v. Rees*, 92 U. S. 214, 221; *Stromberg v. California*, 283 U. S. 359; *Lanzetta v. State*, 306 U. S. 451).

The next two opinions of this Court relied on by Judge Roberds below, *Whitney v. California*, 274 U. S. 357, and *Burns v. United States*, 274 U. S. 328, fall short just as does the *Fox* case, *supra*, in justifying the repression here attempted.

For in both the *Whitney* and *Burns* cases, this Court dealt with cases involving the so-called criminal syndicalism statutes forbidding advocacy of sabotage necessitating violent overthrow of industry or government.

Moreover in the *Whitney* case the evidence further showed (274 U. S. p. 379) "the existence of a conspiracy on the part of members of the International Workers of the World to commit *present serious crimes*", while the *Burns* case, furthermore, went off on a procedural point (274 U. S. p. 337).

And in any event, both cases were dealing with the one statute the "language" of which was "clear; the definition of 'criminal syndicalism' specific" (see 274 U. S. at p. 368).

And this Court, at the very same (May, 1927) term in which it decided the *Whitney* and *Burns* cases, *supra*, in *Fiske v. Kansas*, 274 U. S. 380, in considering a con-

viction obtained under the self-same kind of syndicalism statute as was under scrutiny in the previous two cases, reversed the *Fiske* conviction on the ground that while the statute perhaps was clear enough in its language, there was no showing in that case of propaganda "advocating the overthrow of the existing industrial or political conditions by force, violence or unlawful means" (see 274 U. S. at p. 386).

What then shall be said of the statute and convictions at bar, where not merely is the statute itself so loose in its wording as to constitute an enveloping "dragnet", but the evidence grounding the convictions reveals not even a scintilla of proof of the advocacy of the change of anything "by force, violence or unlawful means".

Another of the criminal syndicalism statute cases relied upon by the Court below is that of *Gitlow v. New York*, 268 U. S. 652.

But the inapplicability of the *Gitlow* case to the situation at bar is concisely pointed out by this very Court in *Herndon v. Lowry*, 301 U. S. 242, 256, when in distinguishing the statute under consideration in the *Herndon* case from the statute in the *Gitlow* case, this Court said:

"There (in the *Gitlow* case), however, we dealt with a statute which, quite unlike \* \* \* (this one at bar), denounced as criminal acts carefully and adequately described".

(Parenthetical inserts ours.)

Thus, the clear distinction between the syndicalism cases and the situations at bar is twofold:

First going no further than the faces of the statutes themselves—we have here a statute denouncing, as criminal, opprobrious vagueness as "disloyalty" and "cause of the enemies of the United States", as against the syn-

dicalism statutes which denounce as criminal "acts carefully and adequately described" (*Herndon v. Lowry*, 301 U. S. 242, 256).

Secondly, these records at bar show no advocacy of force or violence of any kind, as against the evidence in all the syndicalism cases of advocacy of change by force and violence—with conviction reversed as soon as the evidence fell short of such a showing (see *Fiske v. Kansas*, 274 U. S. 380, quoted just above).

**B. This Court's holdings in the Espionage Act cases do not justify the degree of repression enacted by the statute here in question.**

The second group of cases relied on below in supporting the statute and convictions here in question, are those decided by this Court under the 1917 Espionage Act.

We find, however, upon examination, that in the actual holdings of this Court, only those provisions of the Espionage Act which interdict (R. 146) "the doing of any of the (specific) act or things enumerated in the (espionage) statute" have ever been given effect by this Court.

Hence it is that not even the consistently dissentient Mr. Justice Holmes in his dissent in *Abrams v. United States*, 250 U. S. 616, 627, ever saw any "reason to doubt that the questions of law that alone were before this Court in the cases of *Schenck*, *Frohwerk*, and *Debs*, 249 U. S. 47, 204, 211, were rightly decided."

For in each of these three Espionage Act cases thus enumerated by Mr. Justice Holmes there was present, even beyond the doubt of the frequently dissentient Messrs. Justices Holmes and Brandeis, "a clear and present danger" to the state in the utterances of the defend-

ants in those cases, in that in each of them "an actual obstruction of the recruiting service" was proved (*Schenck* case, 249 U. S. 47, 52).

And how far beyond the evidence in these cases at bar went the evidence in the *Abrams* case, *supra*, is manifest from the very words of the majority opinion in that case which read the utterances there as advocating "a resort to a general strike of workers in ammunition factories for the purpose of curtailing the production of ordnance and munitions necessary and essential to the prosecution of the war" (250 U. S. 616, 624).

And even from such language, taking into account the circumstances of its utterance, Messrs. Justices Holmes and Brandeis were so far from being able to apprehend "a clear and present danger" to the community as to be unable to agree with the majority in the *Abrams* case, despite their conformity with the majority in the other three (250 U. S. p. 624 ff.).

We mention this dissent in the *Abrams* case to illumine the application of the "clear and present danger" doctrine laid down by this Court in *Schenck v. United States*, 249 U. S. 47.

No need is there for us before this Court to expatiate upon the doctrine. We do no more than to recall that it "is a rule of reason" that "can be applied correctly only by the exercise of good judgment", which must be called upon to decide as a question of degree. " \* \* \* whether in a particular instance the words spoken or written fall within the permissible curtailment of free speech" (*Schaefer v. United States*, 251 U. S. 466, at pp. 482-483).

To skip then for a moment from the Mississippi statute, which to this point we have considered in the abstract, to the evidence under which these convictions were obtained:



What does the evidence show? Some (to us) misguided zealots, not politically, but religiously inspired, who impress many persons as being repellantly fanatic, rather than reasonably induced in their convictions, and who act not in concert or conspiracy, but singly or in twos to win over civilians, and not the military, to their creed.

Is it such as these who constitute "a clear and present danger" to the stability of the state?

Woe to us and all our institutions if such as these require repression! It seems to us that if these "poor and puny" propagandists must now, because of war, be repressed, then indeed, our beloved democracy is one which even when victorious will have lost its "liberty at its own hands". (See dissenting opinion of Chief Judge Smith below, R. 177.)

For it needs but a juxtaposing of the evidence in these records at bar alongside the evidence in cases such as *Abrams v. United States*, 250 U. S. 616; *Schaefer v. United States*, 251 U. S. 466, *Gilbert v. Minnesota*, 254 U. S. 325; *Milwaukee Publishers Co. v. Burleson*, 255 U. S. 407, or any of the other Espionage Act cases decided by this Court to perceive how far the evidence adduced in any of those cases goes beyond anything adduced at bar.

However, close the question of degree may have been in any of the cases just cited, it is our considered belief that the evidence at bar is so remote from any showing of "clear and present danger", that even the majority, we think, in any of those cases just cited would have agreed in applying to the case at bar the dissenting words of Mr. Justice Brandeis in *Schaefer v. United States*, 251 U. S. 466, 483:

"\* \* \* no jury acting in calmness could reasonably say that any of the publications set forth in

the indictment was of such a character or was made under such circumstances as to create a clear and present danger either that they would obstruct recruiting or that they would promote the success of the enemies of the United States. That they could have interfered with the military or naval forces of the United States or have caused insubordination, disloyalty, mutiny or refusal of duty in its military or naval services was not even suggested; and there was no evidence of conspiracy  
 • • •”

Exactly so, we submit, in all three cases at bar.

**C. This Court's holdings in the flag salute cases do not justify the degree of repression enacted by the statute here in question.**

The third line of holdings of this Court relied on in the controlling opinion below to sustain these convictions (R. 153), is known as the flag salute cases, headed by *Gobitis v. School District of Minersville*, 310 U. S. 586.

We pass the point that the *Gobitis* case, by the explicit withdrawal from its support of four of the present justices of this Court, has been undermined to the point of collapse (See Chief Justice's Stone's original dissent in the *Gobitis* case, *supra*, and special dissenting opinion in *Jones v. City of Opelika*, 316 U. S. 584).

For we find it unnecessary here to quarrel with the holding of the *Gobitis* case\* for the reason that we believe that it simply does not even touch the situations at bar.

For in the *Gobitis* case this Court was dealing with the application by the statute there of an indirect sanction—that is, of a compulsion to salute the flag as a condition of attending public school.

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\* Our position on this case is well known to this Court by the filing of Briefs *amicus curiae* in the *Gobitis* case, *supra*, and in *West Virginia State Board of Education v. Barnette*, No. 591, This Term.

It was not the right to propagandize—the right of free speech—which was there involved. It was not forbidden to the children—or their elders—to agitate for abolition of the flag salute. They were required only as a condition of attending public school to perform a certain act—salute the flag. Neither the children nor their elders were forbidden by the statute to agitate for the abolition of the act.

Viewing it purely logically, the *Gobitis* enactment was one as though it were required of school children that they listen to the teaching of American history—or of German history—as a condition of attending school, at the same time as they or their parents were left free to agitate or petition for the elimination of the teaching in public school of American—or German—history.

Different—far different—would the *Gobitis* enactment have been if it forbade peaceful agitation seeking to eliminate the flag salute. For then, indeed, instead of the statute's enactment an indirect sanction encouraging flag saluting, we would have a direct interdiction of agitation against it.

It is one thing to encourage an act or line of conduct—it is wholly another to forbid any agitation against it.

Indeed, both these activities are simply part of “the free trade in ideas” in the open “competition of the market” which is so vital a part of democratic functioning. (*Abrams v. United States*, 250 U. S. 615, 630.)

What the *Gobitis* enactment did was simply to give an unfair advantage to the activity in favor of flag saluting as against the activity opposed. But it did not, as attempts the statute here in question, attempt to *wipe out* one activity as against the other.

And that the principle of the *Gobitis* case—unconstitutional as we think it is—simply does not touch that in

these situations at bar, is further proved by the fact that any number of state courts, wholly in agreement with this Court's holding in *Schenck v. United States*, 249 U. S. 47, have nevertheless found themselves unable to follow it in its holding in the *Gobitis* case (See *State v. Lefebvre* (N. H.), 20 A. (2d) 185; *Commonwealth v. Johnson*, 309 Mass. 476; *Kansas v. Smith*, 155 Kansas 588; *Bolling v. Superior Court* (Wash.), 133 Pac. (2d) 803; *In re Reed* (N. Y.), 262 App. Div. 858; *Commonwealth v. Nemchik* (unpublished) (Court of Quarter Sessions, Luzerne Co. Penna)).

**D. The other miscellaneous holdings of this Court relied on by the Court below do not justify the degree of repression enacted by the statute here in question.**

The syndicalism cases, the Espionage Act cases, and the flag salute cases having been discussed, there remain for scrutiny a few other miscellaneous holdings of this Court which were relied on by the affirming opinion below to support the statute here in question and these convictions obtained under them.

Thus, the case of *United States v. Macintosh*, 283 U. S. 589, decided by a bare majority of this Court, deals simply with the right to exclude from naturalization an alien who refuses to take an unqualified oath of allegiance—and, obviously, without saying more, furnishes no support for a statute such as at bar.

And, again, *Halter v. Nebraska*, 205 U. S. 34, also relied on by the controlling opinion below (R. 154), is simply a case approving a statute forbidding the use of our country's flag for commercial advertising. Such a holding, again obviously, furnishes no support for a statute such as at bar.

In *Davis v. Beason*, 133 U. S. 333, another holding of this Court relied on in the controlling opinion below (R. 158), this Court upheld a statute which forbade doctrine that "taught and counselled \* \* \* its devotees to commit the crimes of bigamy and polygamy".

But in the *Beason* case as in *Goldman v. United States*, 245 U. S. 474, still another holding of this Court relied on in the controlling opinion below (R. 159), we have two more cases which simply fall within the rule of the *Fox* case, 236 U. S. 273, discussed *supra*.

For in the *Beason* and *Goldman* cases this Court reaffirmed the rule that "an unlawful conspiracy \* \* \* to bring about an illegal act and the doing of overt acts in furtherance of such conspiracy is in and of itself inherently and substantively a crime, punishable as such \* \* \*". (See 245 U. S. p. 477.)

Obviously such a ruling as was thus followed in the *Beason* and *Goldman* cases can furnish no support for the convictions at bar in which there was no proof—or even allegation—of either "an unlawful conspiracy", or of any attempt "to bring about an illegal act".

We have, thus, in mentioning the *Beason* and *Goldman* cases arrived without, we think, omitting any, at the last of the holdings of this Court reported with opinion which were marshalled by the controlling opinion below in support of the statute here in question and the convictions obtained under it.

We respectfully submit that analysis of these holdings reveals each of them to fall short of justifying the degree of repression enacted by the statute here in question, and exemplified by the convictions here obtained.

## POINT II

**The emergency of war does not serve to validate the statute here in question.**

The controlling opinion below itself conceded that (R. 145),

“• • • if this were peace-time legislation, the writer would not hesitate to hold it unconstitutional • • •.”

But, continues the controlling opinion below, because this is a statute designed “to aid in the prosecution of the present war”, it is, therefore, a statute which though fatally bad in peace-time, is now, in war approved.

We pass the point that “The war power of the United States, like its other powers and like the police power of the States, is subject to applicable constitutional limitations” (*Hamilton v. Kentucky Distilleries*, 251 U. S. 146, 156, and see *Ex Parte Milligan*, 2 Wall. 2, 120).

For a most obvious fallacy, it is submitted, in this “war emergency” reasoning of the controlling opinion below, is demonstrable by the proposition that,

**A. A statute which is “vague and indeterminate” such as is the statute here in question is necessarily violative of the due process clause of the Fourteenth Amendment, and hence, cannot stand.**

The controlling opinion proceeds (R. 145) to justify the statute here in question as “an emergency, temporary war act” by quoting this Court’s language in *Schenck v. United States*, 249 U. S. 47, 52, that “when a nation is at war, many things that might be said in time of peace

are such a hindrance to its effort that their utterance will not be endured so long as men fight \* \* \*".

Granted.

But how can this serve to breathe constitutional life into a statute such as at bar whose first fatal infirmity is that, as said by Chief Justice Hughes for the majority in *Stromberg v. California*, 283 U. S. 359, it is (p. 369),

"A statute which upon its face \* \* \* is so vague and indefinite as to permit the punishment of the fair use of this opportunity (for free political discussion) is repugnant to the guaranty of liberty contained in the *Fourteenth Amendment*." (Parenthetical insert and italics ours.)

For it is now beyond quibble that, as again said by Chief Justice Hughes for a united Court in *DeJonge v. Oregon*, 299 U. S. 353, 365:

"Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the *Fourteenth Amendment* of the Federal Constitution."

Note, thus, that a statute which in its proscription of free speech is "vague and indefinite" is a statute which not only *may* be violative of the First Amendment, but is *necessarily* violative of the Fourteenth.

Another way, perhaps, of putting it, is that a statute might conceivably properly attempt to interdict "encouraging an actual breach of the law" (*Beason v. Davis*, 133 U. S. 333; *Fox v. Washington*, 236 U. S. 273), and thus not be outlawed by the First Amendment, yet, nevertheless, might phrase its interdiction in such "vague and uncertain" language as to render it thus a "dragnet",



and thus outside the pale of, and voided by, the Fourteenth Amendment of the Constitution (*Herndon v. Lowry*, 301 U. S. 242, 264; *Stromberg v. California*, 283 U. S. 359, 369).

For as more particularly pronounced by this Court in speaking of just such a vaguely worded statute as that at bar (*Herndon v. Lowry*, 301 U. S. 242, 264):

“So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law *necessarily* violates the guarantees of liberty embodied in the Fourteenth Amendment”.  
(Italics ours.)

If, therefore, we are correct in our contention that the statute here in question is “vague and indeterminate” in its delineation of “the boundaries thus set to \* \* \* freedom of speech”, it becomes clear therefore that the breath of constitutional life is not given it because it was enacted as “a temporary war act”, (*DeJonge v. Oregon*, 299 U. S. 353).

A reading of the *Schenck* case, 249 U. S. 47, reveals that it does no more than make clear that “the First Amendment to the Constitution forbidding Congress to make any law abridging the freedom of speech” will not be permitted to be perverted to protect words that “create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent”. (See 249 U. S. pp. 47, 49, and 52.)

But it still remains true that any statute, whatever may be the alleged beneficences of its purposes, which, whether enacted in war or peace, is “so vague and indeterminate” as is the statute at bar, “as to permit the punishment of the fair use” of free speech, is a statute

which on its face violates the due process clause of the Constitution and must, therefore, be stricken down.

*U. S. v. Cohen Grocery Co.*, 255 U. S. 81;  
*Herndon v. Lowry*, 301 U. S. 242, 264;  
*Stromberg v. California*, 283 U. S. 356, 369;  
*DeJonge v. Oregon*, 299 U. S. 353.

For in truth, as said by this Court unanimously in *Lanzetta v. New Jersey*, 306 U. S. 451, 453:

“No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes”.

And again, as was previously stated even more fully by this Court in *Connolly v. General Const. Co.*, 269 U. S. 385, 391:

“That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law”.

**B. “How much democracy shall be shelved in war-time”?**

It is, however, because the error in the “emergency war act” reasoning of the affirming opinion below is demonstrable on a broader ground than that just above argued, that we pose this question put by Arthur Krock

on the editorial page of the New York Times of April 6, 1943.

For given a statute which is "clear", and whose definitions are "specific", such as was under scrutiny by this Court in *Whitney v. California*, 274 U. S. 357, 368, and which therefore falls short of violating "the first essential of due process of law" (*Connolly v. General Const. Co.*, 269 U. S. 385, 391), the "question" that still remains "in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent", (*Schenck v. United States*, 249 U. S. 47, 52).

Addressing this question to these situations at bar "to ascertain how much democracy shall be shelved in wartime", what do we find?

We find, in all three cases, "poor and puny" itinerants, without political motivation, religiously inspired, going from family door to family door, and at most and worst, preaching it to be "idolatry" to perform the external act of saluting any flag, including our country's own, and in the case of *Taylor*, an itinerant, who, in addition, preached that "It is wrong for the President to send the army across for they are just being shot down for nothing".

Is this the stuff on which "restriction . . . is required in order to protect the State from destruction or from serious injury, political, economic or moral" (*Whitney v. California*, 274 U. S. 357, 373)?

Different might these situations be if these latter preachings were directed to men in uniform, or in cantonment, or barrack (*Frohwerk v. United States*, 249 U. S. 204).

But they were not—they were addressed only to individual civilians—so that surely these preachments fall

short of being of "sufficient weight to warrant the curtailment of liberty of expression" (*Bridges v. California*, 314 U. S. 252, 263).

It seems to us that whatever we may think of these defendants and their utterances, we can all agree that "no danger flowing" from such as they "can be deemed clear and present"; that "the incidence of the evil apprehended" from such as they is not "so imminent that it may befall before there is opportunity for full discussion" (*Whitney v. California*, 274 U. S. 357, 377).

This—apart from the vagueness of the statute, apart from the protections of the Fourteenth Amendment—this we submit, is the guide here to be invoked.

For just as was said by this Court in *Bridges v. California*, 314 U. S. 252, 263:

"What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."

We submit that these utterances at bar, in the circumstances of their utterance, fall far, far short of the danger line thus by this very Court marked out.

The crime if such it be of these defendants, we submit, is no worse than that "they believe more than some of us do in the teachings of the Sermon on the Mount" (See 279 U. S. at p. 655).

Few will dispute that "the great interest in free speech should be sacrificed only when the interest in public safety is really imperilled" (*Chafee, Freedom of Speech in Wartime*, 32 Harv. L. R. 932, 960).

It is our earnest belief, reviewing these convictions at bar, as objectively as we can, that the public safety is a

far cry from being "really imperilled" by the preachments and doctrines of such as these at bar.

How much democracy must be shelved in wartime?

Surely not so much as requires the suppression of such as are defendants at bar and the repression of the doctrines of non-violence that they feel called upon to preach.

### POINT III

Wherefore it is respectfully submitted that these convictions at bar ought to be reversed and the indictments dismissed because,

A. The statute here in question "upon its face \* \* \* is so vague and indefinite" as to render it an unconstitutional "dragnet" violative of the Fourteenth Amendment of the Federal Constitution (*Stromberg v. California*, 283 U. S. 359; *DeJonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 242) and further,

B. The evidence in support of these convictions at bar is so far from any showing of "clear and present danger" to the security of the state that the convictions here obtained are violative, as well, of the First Amendment of the Federal Constitution.

Respectfully submitted,

ZARAH WILLIAMSON,  
Of the New York Bar,

CHARLES C. EVANS,  
Of the Mississippi Bar,  
*Counsel for American Civil  
Liberties Union, Amicus Curiae.*

# SUPREME COURT OF THE UNITED STATES.

Nos. 826, 827, 828.—OCTOBER TERM, 1942.

R. E. Taylor, Appellant,  
826                    vs.  
State of Mississippi.

Betty Benoit, Appellant,  
827                    vs.  
State of Mississippi.

Clem Cummings, Appellant,  
828                    vs.  
State of Mississippi.

} Appeals from the Supreme Court  
of the State of Mississippi.

[June 14, 1943.]

Mr. Justice ROBERTS delivered the opinion of the Court.

March 20, 1942, the State of Mississippi enacted a statute<sup>1</sup> the title of which declares that it is intended to secure the peace and safety of the United States and of the State of Mississippi during war and to prohibit acts detrimental to public peace and safety. The first section, with which alone we are here concerned, provides:

"That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony

<sup>1</sup> Chap. 178, General Laws of Mississippi, 1942.

and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years."

At the June 1942 term of the Madison County Circuit Court, Taylor, the appellant in No. 826, was indicted for orally disseminating teachings designed and calculated to encourage disloyalty to the government of the United States and that of the State of Mississippi; and for orally disseminating teachings and distributing literature and printed matter reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States and of the State of Mississippi, and designed and calculated to encourage disloyalty to the government of the United States.

At the June 1942 term of the Marion County Circuit Court, Betty Benoit, the appellant in No. 827, was indicted for disseminating and distributing literature and printed matter designed and calculated, and which reasonably tended to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States.

At the July 1942 term of the Warren County Circuit Court, Cummings, the appellant in No. 828, was indicted for distributing printed matter designed and calculated to encourage disloyalty to the United States Government and to the State of Mississippi, and tending to create an attitude of stubborn refusal to salute, honor or respect the flag or the Government of the United States and the State of Mississippi.

Demurrers and motions to quash, challenging the constitutional validity of the statute, were overruled. The defendants pleaded to the indictments and, after trial, were convicted. Each was sentenced to imprisonment in the state penitentiary for a term to expire at the end of the existing war, but not to exceed ten years. Appeals were perfected to the Supreme Court of Mississippi which, by an evenly divided court, affirmed the convictions.<sup>2</sup>

The appellants maintained below, and assert here, that their convictions denied them the rights guaranteed by the Fourteenth and First Amendments, in that, as construed and applied to them, the Act abridges freedom of press and of speech and is so vague, indefinite, and uncertain as to furnish no reasonably ascertainable standard of guilt.

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<sup>2</sup> 194 Miss. —, —, —; 11 S. 2d 663, 683, 689.



The evidence was contradictory and conflicting but the juries resolved the conflicts against the appellants. We must, therefore, examine the questions presented on the basis of the proofs submitted by the State.

In No. 826 the prosecution offered evidence to show that Taylor, in the course of interviews with several women, the sons of two of whom had been killed in battle overseas, stated that it was wrong for our President to send our boys across in uniform to fight our enemies; that it was wrong to fight our enemies; that these boys were being shot down for no purpose at all; that the two women's sons may have thought they were doing the right thing to fight our enemies, but it was wrong; that Hitler would rule but would not have to come here to rule; that the quicker people here quit bowing down and worshiping and saluting our flag and Government the sooner we would have peace. Books and pamphlets distributed by Taylor were placed in evidence. Certain statements in these books, said by the Supreme Court of Mississippi to be typical, are copied in the margin.<sup>3</sup>

In No. 827 it was proved that the appellant Betty Benoit distributed Volume XXIII, No. 583, of a publication entitled "Consolation", which contained a reprint of an editorial from a

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<sup>3</sup> "All nations of the earth today are under the influence and control of the demons. . . . All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government of kingdom of Almighty God . . . and all are under the control of the invisible host of demons, . . ."

"But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment."

"Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world."

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment. . . ."

In its opinion the court added:

"Other passages in this literature teach that 'the so-called democracies' hold out no hope of peace, security, life or happiness—that the only place of safety is in Theocracy; that if there is a conflict between state law and what Jehovah's witnesses conceive to be Jehovah's law, the state law should not be obeyed; that Jehovah's witnesses take a pledge not to salute the flag and that to undertake by law to force a child to salute the flag is to 'frame mischief by law'."

Lewiston, Maine, newspaper commenting adversely upon the decision in *Minersville School District v. Gobitis*, 310 U. S. 586, and vigorously asserting that the salute of the national flag amounted to a contemptible form of primitive idol worship. The publication also contained an alleged foreign dispatch which stated that the flag salute ceremony, a daily event in French schools, originated in the Catholic schools of France; commented that the type of mind which finds satisfaction in worshipping images would also be most inclined towards various kinds of emblem worship, and added that the dispatch confirms the claim that the flag salute in the United States has been covertly pushed by the Catholic hierarchy here.

In No. 828 the State proved that the appellant Cummings distributed a book called "Children". The volume was placed in evidence. Long excerpts were read to the jury most of which seem irrelevant to the charges in the indictment. One passage, however, appears to be that on which the prosecution especially relied. It is copied in the margin.<sup>4</sup>

The appellants are all members of Jehovah's Witnesses. There is nothing in the records to indicate that, in making the statements and distributing the printed matter in question, they were communicating and teaching any doctrine in which they did not sincerely believe.

Section 1 of the Act defines six offenses. The indictments in Nos. 826 and 828 charge the commission of two of them<sup>5</sup> in a

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<sup>4</sup> "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12:12, 17.) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20:1-5.) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and the children who insist on obeying the commandments of God. This makes the way of both parents and children more difficult, but at the same time it puts a test upon them and affords them the opportunity to prove their faith and obedience and to maintain their integrity towards God and his King."

<sup>5</sup> There is no charge in any of the indictments of (1) preaching, teaching, dissemination of teachings, or distribution of written or printed matter designed or calculated to encourage violence or sabotage; (2) advocacy, by action or speech, of the cause of the enemies of the United States; (3) the giving of information as to military affairs; (4) incitement of racial disturbances, disorder, prejudice or hatred.

single count,—(1) teaching and dissemination of printed matter designed and calculated to encourage disloyalty to the national and state governments, and (2) distribution of printed matter reasonably tending to create an attitude of stubborn refusal to honor or respect the flag or Government of the United States or of the State of Mississippi. In No. 827 the single offense charged is the dissemination of literature reasonably tending to create the denounced attitude towards the flag and Government.

In *West Virginia State Board of Education v. Barnette*, No. 591 of the present term, the court has decided that a state may not enforce a regulation requiring children in the public schools to salute the national emblem. The statute here in question seeks to punish as a criminal one who teaches resistance to governmental compulsion to salute. If the Fourteenth Amendment bans enforcement of the school regulation, *a fortiori* it prohibits the imposition of punishment for urging and advising that, on religious grounds, citizens refrain from saluting the flag. If the state cannot constrain one to violate his conscientious religious conviction by saluting the national emblem, then certainly it cannot punish him for imparting his views on the subject to his fellows and exhorting them to accept those views.

Inasmuch as Betty Benoit was charged only with disseminating literature reasonably tending to create an attitude of stubborn refusal to salute, honor, or respect the national and state flag and government, her conviction denies her the liberty guaranteed by the Fourteenth Amendment. Her conviction and the convictions of Taylor and Cummings, for advocating and teaching refusal to salute the flag, cannot be sustained.

The last mentioned appellants were also charged with oral teachings and the dissemination of literature calculated to encourage disloyalty to the state and national governments. Their convictions on this charge must also be set aside.

The statute as construed in these cases makes it a criminal offense to communicate to others views and opinions respecting governmental policies, and prophecies concerning the future of our own and other nations. As applied to the appellants it punishes them although what they communicated is not claimed or shown to have been done with an evil or sinister purpose, to have advocated or incited subversive action against the nation

or state,<sup>6</sup> or to have threatened any clear and present danger to our institutions or our government.<sup>7</sup> What these appellants communicated were their beliefs and opinions<sup>8</sup> concerning domestic measures and trends in national and world affairs.

Under our decisions criminal sanctions cannot be imposed for such communication.

The judgments are reversed.

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<sup>6</sup> See *Schenck v. United States*, 249 U. S. 47; *Abrams v. United States*, 250 U. S. 616; *Whitney v. California*, 274 U. S. 357.

<sup>7</sup> See *DeJonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 242.

<sup>8</sup> See *Stromberg v. California*, 283 U. S. 359; *Thornhill v. Alabama*, 310 U. S. 88.

**CLERK'S COPY.**

*No brief filed by appellee in this case*

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1942**

**No. 827**

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**BETTY BENOIT, APPELLANT**

**vs.**

**THE STATE OF MISSISSIPPI**

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**APPEAL FROM THE SUPREME COURT OF  
THE STATE OF MISSISSIPPI**

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**FILED MAR 15 1943 . 194 .**

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## **Organization of the Court**

### **CIRCUIT COURT, MARION COUNTY, MISSISSIPPI MINUTES, JUNE CRIMINAL TERM, 1942**

#### **THE STATE OF MISSISSIPPI, COUNTY OF MARION MONDAY MORNING JUNE 15th, 1942**

Be it remembered that was begun and held a regular Criminal term of the Honorable Circuit Court of Marion County, Mississippi, and in the 15th Circuit Court District of the State of Mississippi and in and for the said County of Marion, at the Court House thereof in the city of Columbia, on the third Monday of June, A. D., 1942, the same being the 15th day of said month, and it being the time and place designated by law for the holding of said Court.

There was present at the opening of the said regular term of Court, the Honorable J. C. Shivers, Judge of the 15th Judicial District of Mississippi; Hon. Sebe Dale, District Attorney of said District; Honorable Bernard Callender, County Prosecuting Attorney; O. J. Foxworth, Sheriff of said County; J. O. Tolar, Clerk of said Court, and Mrs. Uhl Poole Fornea, Official Court Reporter of said Court.

The Grand Jurors came into open court and reported the following numbered indictment to-wit: 1826.

The defendant appealed.

#### **THE STATE OF MISSISSIPPI, COUNTY OF MARION CIRCUIT COURT, JUNE TERM 1942.**

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of said county, elected, empaneled, sworn and charged to inquire in and for the county aforesaid, at the term aforesaid, of the court

aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present, that

**MRS. VIOLET BABIN  
AND  
MISS BETTY BENOIT**

in said county, on or about the . . . . day of June, 1942, acting together and in conjunction with each other, as individuals and as members of a certain organization or sect commonly known as Jehovah's Witnesses, did then and there wilfully, unlawfully, feloniously, knowingly and intentionally disseminate and distribute certain literature and printed matter designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America, to wit, a certain publication or journal, entitled "Consolation, a Journal of Fact, Hope and Courage", being Vol. XXIII No. 583 of said publication, dated January 21, 1942, published by Watchtower Bible and Tract Society, Inc., which said publication or journal was printed in the English language and contained an article under the caption "Public Opinion in Maine" in the following words, to wit:

"The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute the American flag would have been nearer right, nearer sound, if the Court had simply said that that is a matter of State jurisdiction.

"But see what a pitiful mockery of education that salute to the flag is!

"There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

"It is probable that not half a dozen members of any

State Legislature can give an adequate definition of what the flag stands for.

"Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside of America.

"Try another definition. Perhaps this definition is not so good now as it was ten years ago, but say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

"As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

"But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts to is a required worship, worship by the children that don't know what they are worshiping. They never will learn by that kind of tyranny.

"See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the land, the great principles of the common law that the fathers brought over with them when they came from England.

"To help the children to understand what is the law of the land, what are the rights of an American citizen, to understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

"To help the children to understand the duties of government; and how those duties are divided to the city, the State Government, the Federal Government.

"It is good that the Supreme Court of the United States

is not going over the country to tell the States that they can do about the flag.—Lewiston Daily Sun.”

and which said publication or journal also contained an article under the caption “French Catholics Start Flag Salute”, in the following words, to wit:

“A dispatch from Monte Carlo says, ‘The salute to the flag ceremony, now a daily event in all French schools, originated in the Catholic schools of France.’ The type of mind that finds satisfaction in worshipping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here.”

and which said publication or journal also contained other articles of similar nature, import and purpose, all of which were then and there designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States, in violation of the statutes in such case made and provided and against the peace and dignity of the State of Mississippi.

BERNARD CALLENDER  
County Prosecuting Attorney

(On Back:)  
No. 1826

STATE OF MISSISSIPPI  
COUNTY OF MARION

June Term 1942.

I N D I C T M E N T

State of Mississippi

v.

Mrs. Violet Babin and

Miss Betty Benoit

Charged with:

Distributing Prohibited Printed Matter

**A TRUE BILL:**

**J. M. Magee**

**Foreman, Grand Jury**

**Witnesses:**

**W. R. Owens**

**O. J. Foxworth**

**Filed 22 day of June, 1942.**

**Recorded 22 day of June, 1942.**

**J. O. Tolar**

**Circuit Clerk**

**-Motion for Severance**

**IN THE CIRCUIT COURT OF MARION COUNTY,  
MISSISSIPPI, FOR THE FIFTEENTH DISTRICT,  
JUNE, 1942 TERM.**

**THE STATE OF MISSISSIPPI**

**v.**

**MRS. VIOLET BABIN  
MISS BETTIE BENOIT**

**No. 1826**

**COME DEFENDANTS, BETTIE BENOIT AND  
VIOLET BABIN, BY THEIR ATTORNEY, TO GRANT  
THEM SEPARATE TRIALS.**

**BETTIE BENOIT  
VIOLET BABIN**

**By G. C. CLARK**

**Attorney for Defendants**

**Filed 6/22/42 J. O. Tolar, Clerk**

## **Order Granting Severance**

No. 1826

Distributing Prohibited Printed Matter

THE STATE OF MISSISSIPPI

v.

MRS. VIOLET BABIN  
MISS BETTY BENOIT

Now comes the defendant's and moves the court for a severance and the court having considered said motion is of the opinion that said motion should be sustained.

It is, hereby ordered and adjudged that said motion is sustained.

## **Stipulation**

IN THE SUPREME COURT OF MISSISSIPPI

No. 35163

BETTIE BENOIT, *Appellant*

STATE OF MISSISSIPPI, *Appellee*

It is agreed between Hayden C. Covington, Attorney for Appellant, and Geo. H. Ethridge, Assistant Attorney General, that on the appeal of this case to the Supreme Court of Mississippi the motion for a continuance and the evidence taken thereon and the order of the court in reference thereto, be deleted from the record and the Clerk of the Supreme Court on filing this agreement seal or bind up the pages 8 to 12 inclusive, containing said motion, and pages 53 to 102 inclusive, containing evidence on said motion, and pages 223 to 232 inclusive, containing copy of exhibit used on said motion, so that the same will not appear or be examined by the Supreme Court of the State nor be copied in the record on appeal from the judgment of

the Supreme Court to the United States Supreme Court by either party should an appeal be taken to the United States Supreme Court.

It is further agreed that the only question to be considered by the Supreme Court of Mississippi and of the United States should the case be carried to that court is the constitutionality of the statute, Chapter 178, Laws of 1942, on its face and as construed and applied; and second, if constitutional, whether the evidence in the record warrants the conviction under the statute, that is to say whether the evidence brings the literature and distribution thereof by the defendant under Chapter 178, Laws of 1942, so as to warrant the conviction.

The purpose of the appeal and the agreement is to have only the above questions presented for decision as briefed and argued by the parties. It is agreed that the indictment is sufficient if the evidence sustains the indictment that it is sufficient to require a proper presentation and disposition of the case and to give proper jurisdiction to the Supreme Court of Mississippi to hear and decide the same case.

WITNESS our signatures this the 18th day of November 1942.

Assistant Attorney General  
Attorney for Appellant



**Demurrer to Indictment**

No. 1826

IN THE CIRCUIT COURT OF MARION COUNTY,  
FIFTEENTH JUDICIAL DISTRICT.

THE STATE OF MISSISSIPPI

v.

BETTIE BENOIT

Filed 6/22/42

J. O. Tolar,

Circuit Clerk

Now comes the above named defendant in above styled and numbered cause and files this her DEMURRER TO THE INDICTMENT against her and for cause therefor says:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, deprives the citizens and residents of Mississippi and particularly this defendant of her inherent right of freedom to worship Almighty God according to the dictates of her own conscience, freedom of press and freedom of speech contrary to Sections 13, 14, 18 and 32 of the Mississippi Constitution and the First Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof deprives the defendant of his inherent right to worship Almighty God according to the dictates of her own conscience, freedom of press and freedom of speech contrary to Sections 13, 14,

18 and 32 of the State of Mississippi and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without the due process of law, contrary to Section 14, Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and the court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police powers of the State, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

### SIX

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session, 1942, is unconstitutional because the entire statute denies equal protection of the law and discriminates between classes,

contrary to Section 1 of the Fourteenth Amendment of the United States Constitution.

### SEVEN

The indictment against this defendant is too vague, indefinite in that it fails to set out by words, or otherwise the time, place or manner wherein the defendant is charged with willfully, unlawfully, knowingly or feloniously circulating printed matter designed and calculated to encourage disloyalty to the Government of the United States of America and of the State of Mississippi. The indictment is defective and subject to demurrer in that the printed matter charged with having been circulated and distributed, is not made a part of the indictment and the pamphlet form is not attached or made a part of the indictment.

### EIGHT

The indictment is too vague, and indefinite in that it fails to allege any specific language, sentence, paragraph, and topic of books, pamphlets or other writings charging the alleged crime of inciting prejudice, hatred or reasonably tend to create an attitude of stubborn refusal to salute, honor or respect the flag and government of the United States or the State of Mississippi.

### NINE

If the defendant is forced to go to trial on the indictment as now written, she could not make a proper defense and would be deprived of her rights of liberty under the laws of the State of Mississippi.

### TEN

The indictment as written does not charge a crime against the defendant according to the laws of Mississippi and does not properly advise her of the charges against her and is not specific enough and she cannot make a proper defense to said charge for she does not know from the indictment the crime charged against her, and cannot properly defend herself if forced to go to trial and would be deprived of her rights and liberties according to the laws

of Mississippi and of the United States, as provided for in such cases. The indictment charges no crime according to the laws of the state of Mississippi. Indictment is bad, because it fails to charge malice aforethought. Indictment also charges two or more offenses in one count.

WHEREFORE the defendant asks the court that said demurrer be sustained and that said case be held for naught and for any other relief both general and special that the Court may grant.

G. C. CLARK

Attorney for Defendant

State of Mississippi  
County of Marion

Comes G. C. Clark, Attorney of record in this cause and states that this demurrer is not filed for delay only, but that he believes that the reasons set out in said demurrer are good and sufficient grounds therefor.

G. C. CLARK

Attorney for Defendant

Sworn to and subscribed before me this the ... day of June, 1942.

J. O. TOLAR

Clerk

SEAL

### **Order Overruling Demurrer.**

In the Circuit Court of Marion County, Fifteenth Judicial District, June A. D., 1942 Term.

No. 1826

THE STATE OF MISSISSIPPI

v.

MISS BETTY BENOIT

This Demurrer duly and timely filed by defendant herein, came on for consideration, and the court having heard

argument of counsel thereon, is of the opinion that the same should be overruled.

Accordingly, it is hereby,  
**ORDERED, ADJUDGED and DECREED** that Demurrer is **OVERRULED**.

### **Motion to Quash the Indictment**

**IN THE CIRCUIT COURT OF MARION COUNTY  
MISSISSIPPI, FOR THE 15th DISTRICT,  
JUNE, 1942 TERM.  
No. 1826**

Filed 6/22/42  
J. O. Tolar, Clerk

**THE STATE OF MISSISSIPPI**

**v.**

**VIOLET BABIN  
BETTIE BENOIT**

Now comes the defendant Bettie Benoit, Violet Babin, in the above styled and numbered cause and files this her **MOTION TO QUASH THE INDICTMENT** returned and filed herein against her and as grounds therefor says:

#### **ONE**

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of the State of Mississippi and particularly this defendant of her right to worship Almighty God according to the dictates of her own conscience, freedom of press and freedom of speech contrary to Sections 13, 14, 18 and 32 of Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

## TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional as construed and applied to the activity of this defendant because Section 1 thereof deprives the defendant of her inherent rights of freedom to worship Almighty God according to the dictates of her own conscience and freedom of press, and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

## THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of the law contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

## FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and the Court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

## FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942,

is unconstitutional because Section 2 thereof is unreasonable and in excess of the police powers of the State and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because the entire statute denies the equal protection of the law and discriminates between classes all contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

### EIGHT

The trial Judge erred in charging the grand jury when he used the following language:

"The Country is now in war and the last legislature passes a law to cause everybody to work for and aid our Nation as they should. Don't allow any person to tell you that it is wrong to salute the flag. Any person that would tell another that it was wrong to salute that flag (pointing out a large American Flag on judge's right) is unworthy of the respect of citizens of America, and should leave this Country, for this should be considered Un-American." The Court further erred in re-convening the Grand Jury after dismissal, and in view of the fact that a re-indictment of defendants was made in twenty minutes or less, indictment being in Circuit Clerk's office at 9:20 (Nine twenty) A. M. the same date, and the grand jury failed to re-call the witnesses on which indictment is based.

WHEREFORE defendant prays that the Court upon



the consideration hereof sustain this MOTION TO QUASH THE INDICTMENT, and dismiss the indictment and order the defendant discharged with her costs, and for such other and further relief as she may show herself justly entitled to.

**BETTIE BENOIT**

By **G. C. CLARK**  
Attorney for defendant

**THE STATE OF MISSISSIPPI, COUNTY OF MARION**

Personally appeared before me the undersigned authority in and for said State, G. C. Clark, who first being by me duly sworn states on oath that the above is true and correct as stated.

Sworn to and subscribed before me, this the 22 day of June, 1942.

**J. O. TOLAR**  
Clerk

(SEAL)

### **Order Overruling Motion to Quash**

No. 1826

**THE STATE OF MISSISSIPPI**

**v.**

**MISS BETTY BENOIT**

This Motion to Quash duly and timely filed by defendant herein, came on for consideration, and the court having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly, it is hereby

**ORDERED, ADJUDGED, and DECREED THAT**  
motion to Quash is overruled.

**Motion for Peremptory Instruction**

No. 1826

**IN THE CIRCUIT COURT OF MARION COUNTY  
MISSISSIPPI FOR THE 15th JUDICIAL DISTRICT****THE STATE OF MISSISSIPPI****v.****BETTIE BENOIT**

Now comes the above named defendant and in the above styled and numbered cause and files this her MOTION FOR PEREMPTORY INSTRUCTION.

**ONE**

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of the State of Mississippi and particularly this defendant of her right of freedom to Worship Almighty God according to the dictates of her own conscience, freedom of press and freedom of speech contrary to Sections 13, 14, 18 and 32 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

**TWO**

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional as construed and applied to the activities of this defendant because Section 1 thereof deprives this defendant of inherent rights of freedom to worship Almighty God according to the dictates of her own conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Section 1 of the Fourteenth Amendment to the United States Constitution.

**THREE**

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942,

is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and the Court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the State, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session, 1942, is unconstitutional because the entire statute denies equal protection of the law and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the viola-

tion of any law of the State of Mississippi.

### **EIGHT**

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt and the undisputable evidence shows that the defendant is not guilty of violating any laws of the State of Mississippi and is not guilty of the act charged in the indictment.

WHEREFORE the defendant prays that the Court sustains the motion for peremptory instruction and instruct the jury to acquit the defendant and by their verdict say, "We, the jury find the defendant not guilty", and render a judgment dismissing the indictment and discharging the defendant with her costs, and defendant prays for such other, further and general relief as she may show herself justly entitled to.

**G. C. CLARK**

Attorney for defendant

### **Given Instructions for the State**

No. 1826

**THE STATE OF MISSISSIPPI**

**v.**

**MISS BETTY BENOIT**

The court instructs the jury for the State that if the jury believe from the evidence beyond a reasonable doubt that the defendant, Miss Betty Benoit, as an individual and as a member of a certain organization or sect commonly known as Jehovah's Witnesses, in Marion County, Mississippi, did wilfully, unlawfully, feloniously, knowingly and intentionally disseminate and distribute certain literature and printed matter designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America, to wit, a certain publication or journal, entitled "Consolation, a Journal of Fact, Hope

and Courage", being Vol. XXIII No. 583 of said publication, dated January 21, 1942, published by Watchtower Bible and Tract Society, Inc., which said publication or journal was printed in the English language and contained an article under the caption "Public Opinion in Maine" in the following words, to wit:

"The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute the American flag would have been nearer right, nearer sound, if the Court had simply said that that is a matter of State jurisdiction.

"But see what a pitiful mockery of education that salute to the flag is!

"There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute rule amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

"It is probable that not half a dozen members of any State Legislature can give an adequate definition of what the flag stands for.

"Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside of America.

"Try another definition. Perhaps this definition is not so good now as it was ten years ago, but, say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

"As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

"But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts

to is a required worship, worship by the children that don't know what they are worshipping. They never will learn by that kind of tyranny.

"See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the land, the great principles of the common law that the fathers brought over with them when they came from England.

"To help the children to understand what is the law of the land, what are the rights of an American citizen, to understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

"To help the children to understand the duties of government; and how those duties are divided to the city, the State Government, the Federal Government.

"It is good that the Supreme Court of the United States is not going over the country to tell the States what they can do about the flag.—Lewiston Daily Sun."

and which said publication or journal also contained an article under the caption "French Catholics Start Flag Salute", in the following words, to wit:

"A dispatch from Monte Carlo says, 'The salute to the flag ceremony, now a daily event in all French schools, originated in the Catholic schools of France.' The type of mind that finds satisfaction if worshipping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here."

and if the jury further believe from the evidence beyond a reasonable doubt that said printed matter was then and there designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor

and respect the flag and government of the United States, then it is the duty of the jury to find the defendant guilty as charged.

Given

GIVEN & FILED

June 23, 1942

J. O. Tolar,  
Circuit Clerk

### **Given Instructions for Defendant**

No. 1826

#### **INSTRUCTION 16**

The Court instructs the jury for the defendant that:

Jehovah's Witnesses have a right to believe, if they so desire, that to salute the flag is worshiping a symbol or emblem or likeness, and if they decline to salute the flag on this ground, the same would not be in violation of any law as charged under the indictment. To force one to salute the flag contrary to conscientious scruples as result of his faith and belief and contrary to his form of worship, would be in violation of the First and Fourteenth Amendments to the Constitution of the United States; and you cannot consider defendant's refusal to so salute in arriving at your verdict.

Given

GIVEN & FILED

June 23, 1942

J. O. Tolar,  
Circuit Clerk

No. 1826

#### **INSTRUCTION "1"**

The Court instructs the jury for the defendant that:

There is no statute or law of the State of Mississippi which requires an adult person, not in attendance at the



public schools to perform the salute to the American Flag, and in arriving at your verdict you cannot consider the fact that the defendant refused to salute or now refuse to salute the American Flag.

Given

**GIVEN & FILED**

June 23, 1942

J. O. Tolar,  
Circuit Clerk

No. 1826

**INSTRUCTION 20**

The Court instructs the jury that in reaching your verdict that you must consider as a whole the writings in question and not take out or cull out, phrases, sentences, or clauses, or paragraphs, from their proper settings in the book or literature in question and base your findings on that so culled out.

Given

**GIVEN & FILED**

June 23, 1942

J. O. Tolar,  
Circuit Clerk

No. 1826

**INSTRUCTION 18**

The Court instructs the jury that it takes twelve jurors all agreeing to bring in a verdict of guilty in a criminal charge. And further instructs the jury that if any one of the jurors have a reasonable doubt of the guilt of the defendant then the verdict of the jury should read, "We the jury cannot agree."

Given

**GIVEN & FILED**

June 23, 1942

J. O. Tolar,  
Circuit Clerk

No. 1826

## INSTRUCTION 14

The Court instructs the jury for the defendant that:

The term, "Reasonable doubt" is a doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your conscience after you have fully investigated the credible evidence and compared it in all of its parts you can say, "I doubt if she is guilty", then it is a reasonable doubt. It is a doubt which settles in your judgment and finds a resting place there, and which produces in your mind a grave uncertainty as to the verdict to be given.

Given

GIVEN &amp; FILED

June 23, 1942

J. O. Tolar,  
Circuit Clerk

No. 1826

## INSTRUCTION 11

The Court instructs the jury for the defendant that:

The defendant has a right to worship Almighty God according to the dictates of the heart, to adopt and to hold any opinion whatsoever on the subject of the Bible, and to do any act such as to distribute the literature in question, or to forbear to do any act such as to refuse to salute the flag of the United States, the doing of which does not seriously and immediately endanger the public morals, health and safety.

Given

GIVEN &amp; FILED

June 23, 1942

J. O. Tolar,  
Circuit Clerk

No. 1826  
INSTRUCTION 22

The Court instructs the Jury for the defendant that the state must prove beyond every reasonable doubt that the defendant did willfully disseminate the literature with the *intent* to create disloyalty to the Government of the United States or of the State of Mississippi or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States or the State of Mississippi.

Given

GIVEN & FILED  
June 23, 1942  
J. O. Tolar,  
Circuit Clerk

**Refused Instructions for Defendant**

No. 1826  
INSTRUCTION 15

The Court instructs the jury for the defendant that:

Freedom of speech and freedom of the press are guaranteed and protected by the Constitutions of the State of Mississippi and of the United States, and this liberty is not confined to newspapers but necessarily embraces pamphlets and leaflets pertaining to matters of government and the Bible. If you find and believe from the evidence or have a reasonable doubt that defendant was engaged in activity of "free press" and "free speech" you will acquit the defendant and you by your verdict will say, "We the jury find the defendant not guilty."

Refused

REFUSED & FILED  
June 23, 1942  
J. O. Tolar,  
Circuit Clerk

No. 1826  
INSTRUCTION 4

The Court instructs the jury for the defendant that:

The defendant has a legal right to print, sell, publish, circulate and otherwise distribute literature which attacks any religious principle, dogma, or doctrine, or any political belief, dogma, or doctrine, and to persuade others to their point of view, the defendant may resort to exaggeration, vilification of men who have been or are prominent or low in church and state, and even may resort to false statements for this purpose, because the people through the Constitution have ordained in the light of history, that in spite of excesses and abuses this liberty is essential to enlightened opinion and democracy, and if there is any evidence of such you will not consider it in arriving at your verdict.

Refused

REFUSED & FILED

June 23, 1942

J. O. Tolar

No. 1826  
INSTRUCTION "2"

The Court instructs the jury for the defendant that:

Words spoken or printed must be more than a theoretical discussion, and before such can be made the basis of a conviction, you must find from the evidence beyond a reasonable doubt that such words are of such a nature as to create a clear, immediate and present danger that they will bring about the overthrow by force and violence the Constitution, laws and government of the State of Mississippi and the United States, which you must find from the evidence beyond a reasonable doubt to be a clear, immediate and present danger. If you fail so to find or have a reasonable doubt thereof, defendant is entitled to an acquittal.

Refused

REFUSED & FILED

June 23, 1942

J. O. Tolar

No. 1826  
INSTRUCTION 3

The Court instructs the jury for the defendant that:

In this country every citizen has the absolute right to distribute literature, freely, and to speak freely upon any subject and thereby express himself and give any opinion concerning any matter without being held answerable therefor to the State of Mississippi, so long as he does not advocate the overthrow of the government, the Constitution and laws thereof, by himself or others, by force and violence, and if you find, or if you have a reasonable doubt thereof, you will acquit defendant.

Refused

REFUSED & FILED

June 23, 1942

J. O. Tolar

No. 1826  
INSTRUCTION 7

The Court instructs the jury for the defendant that:

Under Section 13 of Article 3 of the Constitution of the State of Mississippi freedom of press and of speech shall be held sacred, and the State cannot interfere with the exercise thereof so long as the individual does not advocate the overthrow of the government by force and violence.

Refused

REFUSED & FILED

June 23, 1942

J. O. Tolar

No. 1826  
INSTRUCTION 6

The Court instructs the jury for the defendant that:

According to Section 6 of Article 3 of the Constitution of the State of Mississippi the people of this State have the inherent right to alter and abolish their form of government when ever they deem it necessary to their safety and

happiness, and every person has the right to advocate a change in the form of government provided that he does not advocate the overthrow thereof by force and violence; and if you find or believe from the evidence, or have a reasonable doubt, that the defendant advocated the establishment in due time God's Kingdom described by the defendant as Jehovah's Theocracy, as foretold in the Bible, and if you find and believe from the evidence, or have a reasonable doubt, that the defendant in advocating the establishment of such Theocracy does not urge a change in the present form of government by force and violence, you will acquit the defendant and by your verdict say: "We the jury find the defendant not guilty."

Refused

**REFUSED & FILED**

June 23, 1942

J. O. Tolar

No. 1826

### INSTRUCTION 5

The Court instructs the jury for the defendant that:

The defendant offered in evidence and contends that she does not advocate or teach orally or in writing not to salute the flag or bear arms in defense of the country, but that she merely declares the commands of Almighty God with reference thereto. If you find and believe that the defendant does not advocate and teach, but merely declares the commands of Almighty God, or if you have a reasonable doubt thereof, you will acquit the defendant.

Refused

**REFUSED & FILED**

June 23, 1942

J. O. Tolar

No. 1826

### INSTRUCTION 8

The Court instructs the jury for the defendant that:

Under Section 18 of Article 3 of the Constitution of the

State of Mississippi each and every inhabitant of the State is granted free enjoyment of all "religious" sentiments and the different modes of worship shall be held sacred and the right thereby secured to every one to worship God according to the dictates of his conscience shall not be interfered with or denied by law unless the exercise thereof is injurious to public morals and dangerous to the peace and safety of the State, from which exercise of the right said danger must be found to be clear, immediate and present and not speculative in any indefinite time in the future. If you believe or find from the evidence, or have a reasonable doubt, that the defendant in the performance of the acts charged in the indictment was exercising her right to worship Almighty God according to the dictates of her conscience in distribution of said literature, and you further find that the exercise of such right does not endanger immediately clearly and presently the peace and safety of the State, then you will acquit the defendant and by your verdict: "We the jury find the defendant not guilty."

Refused

REFUSED & FILED

June 23, 1942

J. O. Tolar

No. 1826

### INSTRUCTION 9

The Court instructs the jury for the defendant that:

According to the case of *Ex-parte* Milligan decided by the Supreme Court of the United States during the Civil War, reported in 4 Wall. 2, "The Constitution of the United States is a law for *rulers* and people equally in war and peace; it covers with the shield of protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the mind of man that any of its provisions can be suspended during any of the great exigencies of government.



Such a doctrine leads directly to anarchy and despotism. But the theory of necessity on which it is based is false for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence."

Refused

REFUSED & FILED

June 23, 1942

J. O. Tolar

No. 1826

### INSTRUCTION TEN

The Court instructs the jury for the defendant that:

Regardless of how unreasonable, objectionable a particular belief or practice with reference to the laws laid down by the Creator in the Bible may appear to be, to permit the judge or jury to intrude their powers into the field of opinion and to restrain the profession or propagation of principles alleged to be based on the Bible on the supposition of their ill tendency is a dangerous fallacy which destroys all freedom of worship of Almighty God. It is not for you to say that the activity of the defendant is not an act of worship. You must assume that it is and can only convict the defendant for the exercise thereof in this case when you find or believe that they advocate the overthrow of the government by force and violence, clearly, immediately and presently.

Refused

REFUSED & FILED

June 23, 1942

J. O. Tolar

No. 1826

### INSTRUCTION 12

The Court instructs the jury for the defendant that:

According to the Constitution of the State of Mississippi no defendant in a criminal case can be convicted for

the crime of sedition or treason except from the mouths of two witnesses other than the defendant herself.

Refused

**REFUSED & FILED**

June 23, 1942

J. O. Tolar

No. 1826

### INSTRUCTION 13

The Court instructs the jury for the defendant that:

Evidence has been offered that defendant takes a position of strict neutrality as to the wars between nations of the world, and because of such position she refuses to participate in any capacity for any nations in such wars. You are specially instructed that such evidence is immaterial to the charge of sedition and should be disregarded and not considered in arriving at your verdict.

Refused

**REFUSED & FILED**

June 23, 1942

J. O. Tolar

### INSTRUCTION 17

No. 1826

The Court instructs the jury for the defendant that:

Defendant and all other Jehovah's Witnesses have a right to call upon the people and to knock on the doors and to ring the doorbell at the homes of the people, and to bring to the attention of the people the recorded word of God, by means of the literature, which they distribute and the phonograph records which are used to reproduce recorded Bible talks; and that to knowingly and willfully endeavor to deprive them each of civil liberties guaranteed under the First and Fourteenth Amendments to the United States Constitution by color of State law would be in violation

of Sections 51 and 52 of Title 18, United States Code Annotated.

Refused

**REFUSED & FILED**

June 23, 1942

J. O. Tolar

No. 1826

**INSTRUCTION 23**

The Court instructs the Jury for the defendant that the Jury should bring in this Verdict, "We, the jury, find the defendant, "Not Guilty".

Refused

**REFUSED & FILED**

June 23, 1942

J. O. Tolar

## Testimony

Filed July 17th 1942, J. O. Tolar, Circuit Clerk  
IN THE CIRCUIT COURT  
MARION COUNTY, STATE OF MISSISSIPPI  
No. 1826

THE STATE OF MISSISSIPPI

v.

MISS BETTY BENOIT

Charge: Distributing Prohibited Printed Matter.

### APPEARANCES

HON. SEBE DALE, District Attorney,  
Columbia, Miss., and HON. BERNARD  
CALLENDAR, County Attorney, Co-  
lumbia, Miss., Counsel for the STATE

AND

HON. G. C. CLARK, Waynesboro, Miss.,  
Counsel for the DEFENDANT.

HON. J. C. SHIVERS, Judge

Mr. O. J. Foxworth, Sheriff

Mr. J. O. Tolar, Clerk

Mrs. Uhl Poole Fornea, Reporter

THE DEFENDANT IS ARRAIGNED AND EN-  
TERED A PLEA OF NOT GUILTY.

TRANSCRIPT of the evidence given on the trial of  
the foregoing styled and numbered cause before HON.  
J. C. SHIVERS, Judge and JURY on the 23rd day of  
June, A. D., 1942.

MR. W. R. (Bill) OWENS: being produced and first  
duly sworn testified for the STATE as follows, to-wit:

DIRECT EXAMINATION BY MR. DALE:

Q What is your name? A W. R. Owens.

Q Commonly called Bill Owens? A That's right.

Q What official position, if any, do you hold in the City of Columbia? A Chief of Police.

Q Were you Chief of Police during the month of April, 1942? A Yes, sir.

Q As such tell the Court and the Jury whether or not one Sunday afternoon in the month of April, 1942, you went to the home of Annie Felix where it is said there was a meeting being held? A Yes, I did.

Q Where does Annie Felix live?

A North of Town—just north of the Golf Club in Marion County, Mississippi.

Q What day of the week was it on?

A Sunday afternoon.

Q About what time of the month was it?

A Around the middle of April, 1942.

Q When you went to the home where Annie Felix lived, did you see the woman sitting over there, Miss Betty Benoit?

A When I went there first I didn't see them but I made two trips down there.

Q When you went the second time she was there?

A Yes.

Q Was the other woman, Mrs. Violet Babin, there when you went the second time? A Yes, sir.

Q That was the other woman sitting over there awhile ago? A Yes.

Q In going to that home, tell whether or not you made any effort to see what literature they had or get any from them? A I did.

Q Mr. Owens, I hand you a book—

BY MR. CLARK: We object to that.

Q —I hand you a book and I want you to tell the Court and the Jury whether or not that book was obtained that afternoon at that place while the Defendant there and the other woman, Mrs. Violet Babin, were present?

BY MR. CLARK: We object unless the whole magazine is read into the record.

BY THE COURT: He couldn't do it until it is identified.  
OVERRULED

BY MR. CLARK: We except.

Q Tell whether or not you obtained that magazine you have in your hand now there that afternoon? A I did.

Q Tell the Court and the Jury whether or not this woman, Miss Betty Benoit, was present at that time?

A Yes, sir.

Q Tell whether or not she and the other woman told you they were issuing that literature and putting it out?

A Yes, sir.

Q What is the name of that magazine?

A "Consolation. A Journal of Fact, Hope, and Courage."

Q What is the volume number of that?

A Volume No. 23, No. 583.

Q What is the date of it? A January 21st, 1942.

Q All right, by whom is it published as shown in the Editorial Section?

A The Watch Tower Bible and Tract Society, Inc., Brooklyn, N. Y.

Q And you obtained that there that afternoon?

A I did.

Q Tell whether or not the Defendant, Betty Benoit, and Mrs. Babin—they are indicted jointly—told you it was their literature and they were putting it out and using it?

A Yes, sir.

Q Were other people there that afternoon?

A Annie Felix and two girls.

Q Colored girls?

A Yes, and Mr. Yearwood, another Policeman for the City of Columbia, and Mr. Aubry Goldman, a taxi driver, were with me.

Q What did you do with all the other literature you got?

A Burned it up.

Q And you kept that which you obtained that day?

A Yes, sir.

Q I WANT TO INTRODUCE THIS BOOK AS EX-

**HIBIT A TO MR. OWENS' TESTIMONY FOR THE STATE.**

**BY MR. CLARK:** We object unless it is read by the witness.

**BY THE COURT:** OVERRULED.

**BY MR. CLARK:** We except.

**Q** Mr. Owens, take the pamphlet now and turn to page 9—

**BY MR. CLARK:** We object unless he starts at the beginning and reads it all the way through.

**BY THE COURT:** It is in evidence; it can be read.

**BY MR. CLARK:** We object unless it is read by the witness now on the stand from beginning to the end.

**BY THE COURT:** OVERRULED. **BY MR. CLARK:** We except.

**Q** Turn to page 9 and read the excerpt beginning there down to the place where it is marked, which is as set out in the indictment.

**BY MR. CLARK:** We object unless the Court gives the witness time to read it all in the record from beginning to end.

**BY THE COURT:** OVERRULED. That is a matter which the District Attorney controls; if he doesn't read it all, you can do it.

**BY MR. CLARK:** I am asking that one of the State's witnesses be allowed to read it, if the Court please. I don't want to be burdened with reading that entire book myself.

**BY THE COURT:** You can read it to the Jury, or have it read if you want to.

**BY MR. CLARK:** But I want it read by a witness into this record.

**BY THE COURT:** I've already said you could do it, Mr. Clark.

**Q** Read that part I designated, Mr. Owens:

**A** "PUBLIC OPINION IN MAINE.

The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute



the American flag would have been nearer right, nearer sound, if the Court had simply said that that is a matter of State jurisdiction.

But see what a pitiful mockery of education that salute to the flag is!

There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute rule amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

It is probable that not half a dozen members of any State Legislature can give an adequate definition of what the flag stands for.

Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside of America.

Try another definition. Perhaps this definition is not so good now as it was ten years ago, but, say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts to is a required worship, worship by the children that don't know what they are worshipping. They never will learn by that kind of tyranny.

See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the

land, the great principles of the common law that the fathers brought over with them when they came from England.

To help the children to understand what is the law of the land, what are the rights of an American citizen, to understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

To help the children to understand the duties of government; and how those duties are divided to the city, the State Government, the Federal Government.

It is good that the Supreme Court of the United States is not going over the Country to tell the States what they can do about the flag."

Q What page of the book did that begin on?

A Page 9.

Q And extended to part of page 10? A Yes, sir.

Q And that is read from the same book you identified as having got at Annie Felix's? A Yes, sir.

Q Turn to page 24; there is a small article there I want you to read.

A "FRENCH CATHOLICS START FLAG SALUTE. A dispatch from Monte Carlo says, "The 'salute to the flag' ceremony, now a daily event in all French schools, originated in the Catholic schools of France." The type of mind that finds satisfaction in worshiping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here."

Q That is quoted as an article from a Monte Carlo Dispatch? A Yes, sir.

Q And it is quoted in the very book you identified as having gotten that Sunday afternoon from these people?

A Yes, sir.

Q What County and State did you obtain that book in from those people?

A Marion County, State of Mississippi.

Q And you say that was about the middle of April, 1942?

A Yes, sir.

Q WE NOW OFFER THAT BOOK, and those two articles which Mr. Owens read and set out in the indictment, AS EXHIBIT A TO MR. OWENS' TESTIMONY. We offer the book generally for the consideration of any and all parts of it that the defense wants to use. He has the privilege of introducing all parts as it is now before the Court in evidence.

Q Annie Felix was present that afternoon, wasn't she?

A Yes, she was present.

Q You may take the witness.

#### CROSS EXAMINATION BY MR. CLARK:

Q \*Mr. Owens, are you a Christian?

A Well, I wouldn't say that I am, to tell the truth about it.

Q Do you belong to any Church?

A I wouldn't say that I am a converted Christian.

Q Do you belong to any Church?

A Yes, the Methodist Church.

Q How long have you known of Jehovah's witnesses?

A Possibly I have been hearing of them for four or five years.

Q Did you ever read any of their literature?

A I have.

Q Did you read all of that book?

A Not the entire book, but most of it.

Q Where did you see Miss Betty Benoit first?

A I saw her first going across the Golf Course north of Columbia.

Q Was she with Mrs. Babin?

A They were together, yes, sir.

Q Was she handing out magazines to the people at

that time? A Not at that time.

Q When did you first see this particular magazine?

A Over at this negro's house.

Q Where did you pick it up?

A I don't remember whether I got it from the colored woman or whether I got it from Mrs. Babin and Miss Benoit; I don't remember about that.

Q At that time did you notice the particular number and volume number on that particular one at the time you picked it up? A Yes.

Q What volume and number do you say it was?

A It is here—I told you one time.

Q Have you seen any other copies of that particular magazine? A Yes, many of them.

Q Did you find many of them there that afternoon?

A A good many, yes.

Q Were there any more of that particular issue?

A I couldn't say about that.

Q Why did you read the two articles mentioned in this particular case?

A Mr. Dale asked me to read them.

Q Was that after you came back down here—was Mr. Dale with you there? A That day?

Q Out at Annie Felix's?

A No; Mr. Yearwood and Mr. Goldman were out there with me.

Q Did they get the magazine, or did you get it?

A I got it myself.

Q Did you find anything else wrong with the magazine? Is it your opinion that what else you read is allright or not?

A Some of it is allright and some I don't think is allright.

Q I mean so far as the Government is concerned?

A I told you what I thought about it. I can't tell you what the Government thinks about it.

Q What other items do you think is wrong in there?

A I don't know whether I could point out any particular item.

Q Did this defendant, Miss Betty Benoit, ever sell or hand you that particular kind of magazine?

A No, sir, she didn't give me anything.

Q You don't know whether she distributed any magazines here in Columbia or not, do you?

A Yes, sir, she did.

Q I mean of that issue.

A I couldn't say about that particular issue.

Q Did you know that hundreds of thousands of those magazines are mailed to subscribers over the entire nation?

A I've heard that.

Q You wouldn't swear that magazine was not mailed to a subscriber here, would you?

A Annie Felix said they gave her this one.

Q THAT IS HEARSAY AND WE OBJECT TO IT.

A Well, you asked me.

Q That's all you know about it—what you heard?

A Yes.

Q Of your own personal knowledge you don't know where that magazine came from, do you?

A Yes, sir, I do know where it came from.

Q I mean how it got to Annie Felix's—you don't know that of your own personal knowledge, do you? A No, sir.

Q Mr. Owens, you threatened Annie Felix there that day, didn't you, and told her she'd better get rid of that stuff?

A No, sir, I told her I was going to get rid of it myself.

Q Didn't you tell her she'd better not be found there with any more of that stuff in her home?

A If I did I don't remember it because I told her and this woman a good bit there that afternoon.

Q You wouldn't say you didn't tell Annie that/that afternoon, would you?

A I just don't remember; I wouldn't say I did or didn't.

Q Who first complained to you about this literature causing a stubborn refusal to salute the flag?

A There was so many that I couldn't attempt to say

who all they were.

Q Name some of them.

A All over Town people called me about this thing and—

Q Well, mention three or four.

A Mrs. Hart, Mrs. Nell Ford, Mrs. Geo. Leatherberry, Mrs. Froman—Oh, I could go on for an hour, there were so many. It got monotonous they called me so much about these people.

Q Did they tell you those girls were against the Government? A They seemed to think that.

Q They didn't tell you positively that? A No.

Q They asked you to investigate, did they?

A They did.

Q There was a question in their minds as to whether they were loyal or dis-loyal to the Government, and asked you to see about it, is that it? A Yes, sir.

Q Did any of the men mention it to you and tell you to look into this matter? A Yes, sir.

Q Mention some of them.

A The Mayor, Mr. Rawls, Mr. Flanders, the Secretary of the Chamber of Commerce, Mr. Callendar, and Mr. Dale over there. I guess I got, oh—well, I guess I could name I don't know how many, but the best people we have in our Town,—the ones I consider the best anyway.

Q Name some more of them—I mean men.

A I was asked by Mr. Tom Pope about it. It is like I said, there was so many that asked me about it and reported them to me I can't name all of them.

Q You can't think of any more right now—I mean men.

A Not right now.

Q Did those men tell you this woman was against the Government?

A They thought they were. They didn't like their teachings.

Q What particular phase of their teaching did they mention to you that made you feel like they might not be allright?

A They thought these people were not loyal to the Government because they wouldn't salute the Flag and their literature taught conscientious objection and wouldn't fight for the Country in the time of trouble.

Q Did they tell you they wouldn't fight?

A They told me that themselves.

Q Those parties told you that? A Which ones?

Q I mean the ones that complained to you?

A Oh, no; the girls told me that. Those parties I named were asking me to investigate the people and do something about it.

Q The girls told you their literature taught that, Mr. Owens?

A That is what they said they stood for. They told me and the Sheriff that, and Mr. Jack Anderson.

Q They didn't tell you the literature said that?

A No, they said that themselves.

Q Did any of the people that complained to you, tell you they had read any of the literature and that it was against the Government?

A They didn't tell me that. They brought me some of the literature though and gave it to me, but I'd already seen it.

Q They had lots of literature and you got some of it in your possession; is that right?

A Yes; I had this and one or two more sheets in my possession.

Q Do you know anybody else that has a copy of this particular volume 583? A I couldn't say.

Q This is the January 21st, 1942 issue?

A That's right.

Q The articles in here were quoted in this magazine before the State of Mississippi, or any other State, had a law of this kind, weren't they?

A I couldn't tell you about that.

Q You know this law was passed in the Legislature since January, don't you?



A I don't know just when it was passed.

Q You read this article here and the last words shows it was quoted from the Lewiston Daily Sun, doesn't it?

A I don't remember. On this particular article it says, "to be continued."

Q Doesn't it say it is quoted from a dispatch from Monte Carlo? A Yes, I read that in the beginning.

Q That article appearing on page 9, what are the last words down there?

A That says quoted from "Lewiston Daily Sun."

Q Every word of that article is a quotation from the Lewiston Daily Sun and re-quoted in Consolation, isn't it?

A Yes, sir.

Q And as you contend, distributed in this Town by Miss Betty Benoit? A That's right.

Q You said awhile ago you didn't know that she distributed it, didn't you?

A Only what they said about it.

Q Did either one of those women tell you Miss Betty Benoit distributed this particular magazine?

A They said they were doing it. I asked them if they were and they said they were.

Q Did they tell you they were distributing Consolation No. 583, Vol. 23 of the January 21st, 1942 issue?

A No, they didn't tell me that. I only got that from them that afternoon.

Q How many people do you know that read a magazine of this issue in Town?

A I don't know that anybody did.

Q Has anybody told you the reading of this issue, or any other issue, of this Magazine, made them not want to salute the flag? A No, sir.

Q Or made them dis-loyal to the Government?

A No, sir.

Q Has anybody told you this literature tended to teach them dis-loyalty to the Government?

A They didn't say it taught them that.

**Q** Do you love the Government any less by reading out of this magazine awhile ago?

**BY MR. CALLENDAR:** That is outside of the question here, if the Court please, and we object to it.

**Q** It will prove whether or not it was intended to do any wrong, IF THE COURT PLEASE.

**BY THE COURT:** I don't think that would have anything to do with this—the paper speaks for itself anyway.

**Q** When you read this article did you feel like you didn't want to salute the Flag?

**A** No, sir; nothing in the world would make me feel that way—nothing.

**Q** Do you respect the Flag any less after reading it?

**A** No, sir, I respect it more after reading it.

**Q** Did anybody who read this magazine tell you they think any less of the Government? **A** No.

**Q** Do you think any less of the Government since reading it? **A** No, sir.

**Q** In this 32 page magazine, will you tell me whether or not any of the items mentioned in the indictment are the main items, or are they the smaller items?

**A** I couldn't tell you that.

**Q** What is the main item?

**A** "Acts of The Theocracy in New England."

**Q** That is in Two parts, isn't it?

**A** Yes; it says: "In Two parts—Part I".

**Q** Read the first paragraph of that article.

**A** "The field experiences of one of Jehovah's witnesses who lived in New England three hundred years ago will be of absorbing interest to all lovers of liberty at this time. Judge Rutherford, in his memorable address at Detroit, July 28, 1940, said—

**Q** Read the next two paragraphs please sir.

**A** "Men who loved God and righteousness, and who refused to yield to religious tyrants and to bow down to and worship creatures, or things, laid the foundation of the

American REPUBLIC. They caused to be written into the fundamental law that all men have the inalienable right to worship God according to the dictates of their conscience." Roger Williams lived in times when religion and state were united both in Europe and in America. In his day it was considered treasonable to advocate and work for their separation. Religious persecution continued soon after his arrival in Boston, in 1631. The Puritans had preceded him and had become the established religion of the New England Colonies. He later found a liberal group at Salem, Massachusetts, with whom he sought to preach the light of truth according to the 'rockie convictions' and enlightened conscience with which he was blessed at that time."

Q That was what Judge Rutherford said with reference to Roger Williams, a Baptist preacher persecuted at that time, isn't it? A That is what it says.

Q Judge Rutherford called him "One of Jehovah's witnesses 300 years ago", didn't he?

A That is in there, yes, sir.

Q Mr. Owens, tell the Court and the Jury whether or not you know Miss Betty Benoit, or for that matter, Mrs. Babin who is jointly indicted here, put that magazine out among the people here?

A Only what they said; they said they were distributing that literature.

Q That's all.

#### REDIRECT EXAMINATION BY MR. DALE:

Q Tell whether or not you had that particular volume there in your possession when they told you they were putting it out? A Yes, sir.

Q That's all.

(WITNESS DISMISSED)

ANNIE FELIX (colored) being produced and first duly sworn testified for the STATE as follows, to-wit:

DIRECT EXAMINATION BY MR. DALE:

Q You are Annie Felix?

A Yes, sir.

Q Annie, do you remember the Sunday that Mr. Bill Owens came to your home and got the literature and stuff you had there? A Yes, sir.

Q When was that, if you remember?

A Along about the 12th of April, I think.

Q Was this woman sitting over there at your home when Mr. Owens came there and picked up the literature?

A Yes, sir.

Q Tell the Court and the Jury whether or not anybody brought any literature there to your house except those women? A Nobody except them.

Q What literature was there at your house those women brought there?

A What I had there they brought it, yes, sir.

Q That's all.

CROSS EXAMINATION BY MR. CLARK:

Q Annie, do you mean to say you are not a subscriber of Consolation?

A I am a subscriber for it but at that time I didn't have the January Consolation.

Q Isn't it a fact that was after January that he got in your trunk and got that magazine there?

A No, sir, he got it off of the table.

Q Didn't he go in your trunk and get literature and burn it? A It was around on the table.

Q It was your literature, wasn't it?

A That what he got?

Q Yes.

A Yes, sir, it was what they placed with me.

Q Isn't it a fact you got those magazines through the mail—I mean that very issue of Consolation?

A No, sir, I didn't get it through the mail. My subscription had expired at that time.

Q It had expired? A Yes, sir.

Q Annie, when you read that magazine, did it make you want to be against the Government? A No, sir, it didn't.

Q Did you feel less love for your Country when you read the magazine? A No, sir.

Q Will you read starting there where Mr. Owens left off and reading a paragraph?

A I can't read very good.

BY MR. DALE: I'll read it for you.

Q No, I want her to read it.

A I'll try.

"Acts of The Theocracy in New-England. In Two parts, —Part I.

Q Start at the 4th paragraph and read, Annie.

A "The Pilgrims and Pilgrim clergy there soon stirred up severe opposition to him. These religionists conspired to rid the country of all men 'who obeyed not the inexorable will of God', not as each individual understood it, but as the established religionists interpreted it.

Persecutions nearly equal to the Inquisition in cruel tortures were practiced. Williams was arrested and brought to trial charged with entertaining 'dangerous opinions.' No lawyer dared to defend him. He stood alone and made his own defense against the hostile court. The Bay Governor, twenty-five court magistrates, the deputy sheriffs, and all the clergy of the colony were present."

Q That's enough. What is the number of that magazine?

A No. 583.

Q Do you—will you swear which one of those girls gave that magazine to you? A Miss Violet.

Q That's all.

## RE-DIRECT EXAMINATION BY MR. DALE:

Q Was the other girl present when she gave it to you?

A They came there together.

Q For the sake of the record, Annie, you are of the colored race, aren't you? A Yes, sir.

Q That's all.

## RE-CROSS EXAMINATION BY MR. CLARK:

Q Since he mentioned that; these ladies are charged with creating racial distrust; did anything they said, by their acts or doings, tend to make you dislike the white people? A No, sir.

Q Did that tend to make you be against the Government?

A No, sir.

Q Are they against the Government, Annie?

A No, sir—

BY MR. DALE: We object to that, if the Court please.

A —they are not against the Government.

BY THE COURT: Sustained.

(WITNESS DISMISSED)

(STATE RESTS IN CHIEF)

BY MR. CLARK: I want to recall Annie Felix for further cross examination if the Court please.

ANNIE FELIX (colored) being recalled to the witness stand testified on FURTHER CROSS EXAMINATION as follows, to-wit:

## FURTHER CROSS EXAMINATION BY MR. CLARK:

Q I forgot to ask you something awhile ago, Annie; what was the number of the magazine you said Mrs. Violet Babin handed you?

A 5—583, I think it was.

Q 583? A If I'm not mistaken, yes, sir.

Q Did you know that was the number of it at the time she gave it to you?

A Not right at the time she gave it to me.

Q When did you find out? A When I began reading it.

Q Did you read it that very afternoon that she gave it to you? A No, sir, not that afternoon.

Q When did you read it?

A In the next day or two when I had time to read it.

Q Had you read it all before Mr. Owens got it?

A I hadn't completed it.

Q Had you read some of it? A Yes, sir.

Q Is this an exact—is this the exact magazine that he got that day?

A Yes, sir, that's the one he got that was lying on the table.

Q Did Mrs. Violet Babin give you this magazine that day, or sometime after that?

A She didn't give it to me that day.

Q Had she been there at your home before that time?

A Yes, sir.

Q Do you know how many times?

A Just one time before that Sunday.

Q Did she ever come back after that time?

A She come back one time.

Q Did she give you any other literature besides this?

A No, sir, just that one, and one or two magazines he burned up. He burned up some of them.

Q Did he burn them right then?

A He burned them up that Sunday evening.

Q Right after he got them? A Yes, sir.

Q Do you know Mr. Hornsby? A Yes, sir.

Q Didn't Mr. Hornsby send you some of those magazines and some of this literature back in the winter?

A He sent me some but he didn't send me that one.

Q Do you know positively that he didn't send you this one? A I want to be positive about it.

Q Do you know that this is the one Mrs. Babin gave you? Be positive about it. You want to be positive, don't you? A Yes, sir, I want to be positive.



Q Are you sure Mr. Hornsby didn't send you that one, Annie?

A I don't remember him sending me this one.

Q That is the January issue, isn't it? A Yes, sir.

Q This was given to you at what time—I mean what time did Mrs. Babin give you this January issue?

A On Thursday, I think; they were just some old ones she had and give me.

Q How many did she give to you that day that she gave you this one? A Two or three others.

Q What numbers were they?

A I didn't notice the number of them.

Q What title were they?

A One or two were Watch Tower magazines and then this Consolation.

Q What was the main title of the others besides the Consolation? A I don't know the title of them.

Q What is the article in this one that you know it by?

A By William Rogers—about him.

Q Didn't you read about Roger Williams awhile ago?

A Yes, sir, I read about William Rogers—I mean Roger Williams—awhile ago.

Q What other article do you know besides the one about Roger Williams?

A I can't think because it has been so long.

Q How do you know this is the exact magazine?

A By the number.

Q That is the only way you do know it, is it?

A Yes, sir.

Q You examined that number that day, did you?

A Sir?

Q I say, you had examined that number that day, had you? A When I looked on the front page of it I saw it.

Q Is that where you found the number?

A Yes, sir.

Q What was the number of the other magazines she gave you that day—the other Consolation?

A I didn't notice that number.

Q But you did notice this number? A Yes, sir.

Q Did she ever teach you any dis-respect to the Flag?

A No, sir.

Q Or did she ever teach you any dis-respect to the Government of this Country? A No, sir.

Q By reading that, did that teach you dis-respect to the Flag or the Government of this Country?

A No, sir.

Q Do you love this Government? A Yes, sir.

Q And you want it to continue until the Theocracy comes, don't you?

A Yes, until the Theocracy comes.

Q Do you want Hitler to win this war? A No, sir.

BY MR. DALE: We object to that, if the Court please.

BY THE COURT: SUSTAINED.

Q Do you know that this is the same magazine the Chief of Police got at your home? A Yes, sir.

Q You know that is identically the same one?

A Yes, sir, he got it there.

Q That very one? A Yes, sir.

Q What marks are on it that makes you know it from any other? A It is about the Theocracy.

Q Don't some of the rest have that word on them?

A Yes, sir, but this one had part No. 1 in it.

Q Are you sure Part No. 1 is in there?

A Yes, sir, I read it.

Q You don't know whether it is part No. 1 or part No. 2, do you? A It is part No. 1—I know it is one of them.

Q It is either part No. 1 or part No. 2 of the Acts of the Theocracy? A Yes, sir.

Q But you don't know which one, do you?

A Part No. 1.

A It is part No. 1.

Q Where is Part No. 1 found at?

A On the front page.

Q You read that part No. 1 awhile ago, didn't you? I

had you to read that, didn't I? A I read it.

Q What is the next article in here besides Part No. 1 of the Acts of the Theocracy?

A I don't know. I read it through but—

Q Are there any pictures in here? A Yes, sir.

Q Pictures of what? A Of the Kingdom Publishers.

Q They are in almost all of them, aren't they?

A Yes, sir.

Q Do you remember the picture of any particular Kingdom publishers? A No, sir.

Q Are there any other pictures in here that you remember besides that? A No, sir.

Q And is there any other article in here you remember besides part No. 1 of the Acts of the Theocracy?

A I read another one about a January 8th article.

Q What was that?

A One of the publishers had ceased.

Q You mean deceased, or died? A Yes, sir.

Q What else did you read in here?

A I didn't complete it.

Q Did you read this article "Manila Reports Fifth Columnists. By United Press: Manila, Dec. 11.—The Bulletin reported today that two Catholic priests had been arrested at San Fernando, in Pampanga province, for asserted fifth column activities in the zone of Japanese invasion attempts. The Bulletin asserted that in Manila a signal line between Nichols Flying Field and an air raid tower was cut, supposedly by fifth columnists, and delayed the alarm when the Japs raided the Manila Bay area yesterday. Air Raid Chief Warden, Alfredo G. Eugenio, issued detailed instructions to the public for procedure in event of gas attacks."

Did you read that article?

A I remember reading it now since you read it over.

Q Did you read that before Mr. Owens got it, or afterwards? A Before he got it.

Q How many days before he got it?

A I don't know about that exactly.

Q Do you know how long you'd had this magazine before Mr. Owens got it?

A It was about three or four days, something like that I think.

Q You know this is the magazine Mr. Owens got?

A Yes, sir, that is the one.

Q What mark was on it by which you can identify it?

A "The Acts of the Theocracy in New England". All of that was on there.

Q Do you know that there are thousands of these same copies that come out? A Yes, sir.

Q Just like that one? A Yes, sir.

Q Yet you swear that's the exact magazine Mr. Owens got at your home on that Sunday afternoon?

A He didn't get it from any other place except there.

Q How do you know he didn't?

A I don't think there was anybody else that had one like that—not up that way.

Q You'd swear to this Jury, would you, that nobody else in Columbia has a magazine like that except you?

A I didn't say that. I don't know anybody up there that had one but me.

Q Will you swear that is the magazine, Annie?

BY MR. CALLENDAR: We object to that because he has been over it repeatedly.

BY THE COURT: SUSTAINED.

Q When did you see that magazine next after Mr. Owens got it from your home? A Not until last night.

Q Yet you undertake to say that's the same magazine. It isn't marked anywhere especially. Is your name on it anywhere?

A No, sir. Anyway, I know I had one just like it.

Q Would you undertake to say it might not be the same magazine? A Well, I'll say it is.

Q What do you say about it, Annie?

A I'll say there is so many of them alike—I couldn't swear this was the one, but I know he got one off of my

table just exactly like this one.

Q Who put it on your table?

A After she give it to me I had all of them on the table.

Q How many did you have on the table?

A I had some other booklets too.

Q And just one like this one?

A Yes, sir, and the other ones were Watch Towers.

Q You had no more Consolations except this one?

A If I did he burned them up.

Q He might have burned up the one he got off your table, mightn't he?

A He could have burned them, but he saved this one out.

Q How do you know? A He said—

Q Oh, he said he got it from your table, did he?

A Yes, sir.

Q And you believe what he said about it, is that right?

BY MR. DALE: We object to that, if the Court please.

A I know it is the same one.

BY MR. DALE: That's been over a dozen times, if the Court please, and we object to it for that reason.

BY THE COURT: Sustained.

Q Do you know why he kept that one? Did he read all of them that afternoon before he burned them?

A No, sir.

Q Well, why did he burn all of them except that one?

A I don't know why he done it.

Q How long was it before he started burning them after he got there? A As soon as he got them out there.

Q And yet he kept that one out?

A Yes, sir, he kept that one out.

Q You say this girl, Miss Benoit, didn't give you this magazine?

A No, sir, she didn't give it to me. Miss Violet give it to me.

Q That's all.

**RE-DIRECT EXAMINATION BY MR. DALE:**

**Q** This girl and the other girl came there together when you were given the magazine, didn't they? **A** Yes, sir.

**Q** That's all.

**(WITNESS DISMISSED)**

**(JURY RETIRES)**

**BY MR. CLARK:**

Comes the Defendant, Miss Betty Benoit, and prays the Court to sustain a motion for a peremptory instruction and instruct the Jury to acquit the Defendant and by their verdict say:

"We, the Jury, find the Defendant not guilty".  
and render a judgment dismissing the indictment and discharging the Defendant; and further prays that the evidence introduced by the State be stricken from the record; and for such other further and general relief that she may show herself justly entitled to.

**BY THE COURT:** Overruled.

**BY MR. CLARK:** We except.

**(JURY RETURNS)**

**MASTER GENE CLARK:** being produced and first duly sworn testified for the **DEFENDANT** as follows, to-wit:

**DIRECT EXAMINATION BY MR. CLARK:**

**Q** You are my son, are you?

**A** Yes, sir.

**Q** I want you to begin at this paragraph in this book and read until I stop you.

**A** "The Pilgrims and Pilgrim clergy there soon stirred up severe opposition to him. These religionists conspired to rid the country of all men "who obeyed not the inexorable will of God," not as each individual understood it, but as the established religionists interpreted it.

Persecutions nearly equal to the Inquisition in cruel tortures were practiced. Williams was arrested and brought to trial charged with entertaining "dangerous opinions". No lawyer dared to defend him. He stood alone and made his own defense against the hostile court. The Bay Governor, twenty-five court magistrates, the deputy sheriffs, and all the clergy of the colony were present. Longacre describes it as the most spectacular assembly and trial, and the most far-reaching in its results, that ever convened in America aside from the Continental Congress of 1776, which was made possible only by the courageous stand of Roger Williams at this eventful trial. His eloquent plea and "testimony against them" lasting many hours succeeded in forcing a division between the magistrates and the deputies—but the clergy got busy.

They lobbied amongst those who showed signs of agreeing with him, and thus influenced those present to bring about his conviction. Though worn and fatigued through hours of grilling, he firmly maintained his integrity. He faced the court and said, "I shall be ready not only to be bound and banished, but to die also, in New England for the truth." He pointed out to the court that he recognized only Jehovah as the one supreme God, and that the civil authorities have no jurisdiction over the conscience on religious matters, and that the civil government had a right to function "in civil matters only." Thus he pioneered the way for the separation of religion and state in America.

The burden of his message was that all men should be free to worship or not to worship according to the dictates of their own conscience. The court ordered Williams banished. He was denounced as "a rebel against the divine Church order." He bade goodbye to his beloved wife and child at mid-night and fled into the wilderness. He faced a cold and wintry blast and a blinding snow-storm. Later, of his experience he wrote to a friend, "I was unmercifully driven from my chamber to the winter's flight, exposed to the miseries, poverties, necessities, wants, debts, hardships of



sea and land in a banished condition. I was sorely tossed for fourteen weeks in a bitter winter season, not knowing what bread and bed did mean, without bow or arrow, spear or club, hatchet, or gun, where no white man has ever trod, eating roots and nuts and acorns where I could find them until I reached the wigwams of the savage Narragansett tribe of Indians." There he found refuge and shelter. A real pioneer. A fugitive from injustice and religious persecution. His great love and kindness won the good-will of those savage elements and awakened their sympathies. He prospered, and established the republic of Rhode Island. The little republic became the wonder and admiration of the world and the haven of the oppressed of all lands. The Puritans later, fearing his rise to power, sought to arrange a compromise with him; but to this he replied by messenger: "I feel safer down here among the Christian savages along Narragansett Bay than I do among the savage Christians of Massachusetts Bay Colony."

A learned student of history says: "A new society was formed in Rhode Island upon the principles of entire liberty of conscience, and the uncontrolled power of the majority in secular concerns—which principles have not only maintained here in Rhode Island but have spread over the entire Union—and given laws to one-quarter of the globe; and dreaded for their moral influence, they stand in the background of every democratic struggle in Europe. Another historian says: "He sowed the seed of liberty which brought forth a bountiful harvest; we enjoy its multiplied blessings." In those days every man's religion was dictated by the state; the state compelled church attendance on Sunday; the people were taxed so that the state supported religion, whether they made any profession of religion or not.

The Puritans believed in religious liberty, but this liberty was not to be enjoyed by any dissenting groups which were not in agreement with the Puritan religion. Oliver Cromwell exposed and denounced this fault when he said: "Is it

ingenuous to ask liberty and not give it! What greater hypocrisy for those who were oppressed by the bishop to become the greatest oppressors themselves as soon as their yoke was removed!"

George Bancroft says: "He was the first person in modern (times) to assert in its plentitude the doctrine of the liberty of conscience, the equality of opinions before the law—Williams would permit persecution of no religion, leaving heresy unharmed by law, and orthodoxy unprotected by the terrors of penal statutes—Longacre says: "While the people of Rhode Island did not always adhere strictly to the ideals of Roger Williams after he passed off the stage of action, yet they were exceedingly jealous for the preservation of their peculiar institutions of religious liberty and freedom of conscience which the founder of Rhode Island had bequeathed to them as their peculiar heritage. When the Constitutional Convention in Philadelphia in 1787 left the question of the establishment of religious liberty and of a state church untouched and undecided in the Constitution which it submitted to the people for ratification, the people of Rhode Island deliberately refused to ratify it unless and until a Bill of Rights was added that guaranteed absolute separation of Church and State, the non-interference in religious matters, and the unmolested and free exercise of the conscience of the individual in matters of religious concerns."

The opposition in that time against the truth was not unlike the violent opposition against Jehovah's witnesses today. Who could doubt that Jehovah raised him up and that he put it into the heart of Roger Williams to perform a task in the face of such tremendous opposition? Today we find the same spirit moving the hearts of His witnesses. The full confidence that Jehovah is backing them up enables them to carry on in the work of announcing the New Government that shall stand forever, The Theocracy. They are opposed by the combined forces of Satan as Roger Williams was in his day. With the religious, financial, and

political influences all entrenched in the seat of governments, a corrupt press and radio, and "legions" of patrioteers ready to crush the life out of those who appear defenseless against them because they insist on telling the truth and obeying God, Jehovah's witnesses are determined that nothing shall stop them. They know that Jehovah will fight for His people as He did in days of old and in His due time He will completely vindicate His great name, and incidentally His own people, and that time is very near. **HAIL THE THEOCRACY!**

#### **AN HONEST GIRL:**

The girl referred to in Consolation No. 504, page 15, is a New England girl. Her parents had had a knowledge of the truth for years, but had not taken their stand for it. They thought their little girl ought to go to Sunday School; so they sent her to a Baptist Sunday School when she had reached the age of 7; but after a few Sundays she would not go any more, saying they did not tell the truth as her mother and daddy believed and taught.

Next they sent her to a Congregational Sunday School, where she stood up for the Bible teaching that only Jesus and the little flock go to heaven and all the rest of the people stay on the earth if they love the Lord; the earth abideth forever, and God will make it like the garden of Eden. The teacher got nervous and so did the girl, and a third Sunday School was tried. In her third and last trial the girl stood by the Bible teaching that we do not have souls; each of us is a soul, and "the soul that sinneth, it shall die." When the girl came home she told her mother she didn't want to go to any more churches, because they don't teach the Bible.

Recently, this office had a letter from this girl and in it she said:

"To prove that one's course of action is an example to those of good-will, I cite an instance that has filled my heart with joy (and not mine only). Before I was born my parents attended meetings of the International Bible Students, but

took no stand for the Kingdom. Since I was a baby they instructed me as far as they knew, but then for over twelve years did not attend any classes. I was sent to Church, but was quickly disgusted with the hypocritical racketeers found therein. I regained the truth, began attending the meetings, and at thirteen made a consecration of myself to do God's will. For the past five years I have been trying to be faithful to the Lord. All this time my parents remained dormant, not even attending studies, though they never opposed the work.

About two months ago I stated definitely my intention of becoming a pioneer, thus devoting all my time to the honor and glory of the name of Jehovah. Since it meant going away from home, and since I am the only child, it was a blow to my parents, and my mother was especially vexed. Our household was in a miserable tension for about a week. And then it happened. My father came to class and liked it. He went on back-calls with me and had a grand time. He went out in the service, and it surely seemed strange to see him trudging along with a bag of books under one arm and a phonograph dangling at his side. My mother then turned about face, helped me prepare to leave, and attended meetings. One week after I left home she went out in the service for the first time. Now, about a month later, they have established themselves as two of the Lord's "other sheep". They have a wonderful time out in the work each week. My mother was just immersed, and my Dad goes out on back-calls whenever possible, and is conducting a model study."

#### **ARRESTED FOR "BLASPHEMY".**

Jesus was charged with blasphemy, and so none should be surprised that this young girl, still in her teens, has been arrested many times, and on the last occasion was at liberty on bonds totaling three hundred dollars for blasphemy in the State of Vermont. If Jesus had been in Vermont when He called the clergy sons of the Devil, vipers, goats, wolves, whited sepulchers, liars, and murderers, they would

have fined Him ten times as much and tried to kill Him besides.

Why the state of Vermont, and especially the city of Burlington, cannot stand it to have a girl in her teens preach the gospel in their midst is something for the Vermonters and the Burlingtonians to explain.

The arrest for blasphemy was at Rutland, but when Mayor John J. Burns, of Burlington, heard of it, he rushed down there and reported that he had appointed twenty-two secret police in Burlington to check up on "suspicious persons". The Burlington Press saw that he was making a fool of himself, and gave the mayor this roast:

"With that number of 'secret police', the mayor ought to have soon the life history and daily habits of nearly every adult in Burlington. Probably, in his efficient manner, he has us all card-catalogued in his private files safely under lock and key in the City Hall vaults.

That's really quite an idea. It should serve as a check on many a citizen who otherwise might think he could keep his life sort of private and unofficial. If tempted to make remarks to his neighbor which might, when repeated, lead to the suspicion that he was only 99 percent patriotic, the sobering thought that perhaps that very neighbor might be a member of the "secret police", should serve to restrain him from any such careless freedom of speech.

In order to be sure that the job is done thoroughly, and that nobody evades this net for fifth columnists which is being spread in Burlington, we believe the Mayor should increase his Gestapo to 27. That would give one for each thousand of population, which would seem to be none too many for this important task."

Five days passed, when the Rutland Herald came out with a condemnation of the methods of Mayor Burns and of his statement that "sometimes the things it is best to do are not quite within the law, but they are effective." "Political and religious liberty and government by law are the deepest-rooted qualities of a democracy. When we start talking

about methods which are 'not quite within the law', we are striking as hard a blow at American freedom as could be struck by any fifth columnists."

The result of these editorials was that the blasphemy charges were "continued indefinitely", i. e., they were dropped. But the blessings that were brought to the girl and to the others involved will doubtless continue forever.

#### THE GRATITUDE OF THE POOR.

Jesus explained that if you want to receive a real blessing the course to pursue is to do something for somebody who can do nothing for you in return. That being the case, how do you suppose Judge Rutherford felt when he got a little note from Geo. S. Kennedy, from a state institution in New England, in which that gentleman said:

"How thankful we men here at the State Farm feel to receive those leaflets outlining the work of the blessed Bible Society. My friends and myself are now reading and rejoicing in the message contained in the booklet REFUGEES, received yesterday. The Lord be with you. We hope some time to make some compensation for the comfort you have given us in the past year. God's spirit is certainly with the Society. The fountain of youth is there."

AFTER three calls on a New England family the mother of the family wrote to the witnesses who had called on her: "Thank you so much for the MODEL STUDY booklet; we are making good use of it. Don is very interested; he likes to read the answers and look up the verses in the Bible; also shows surprising interest for his age. While, as I told you, it is many years since I first took interest in this work, it is only since your coming that I have realized the mighty volume it has grown to be, and also to realize what a wonderful God the Almighty is when one really comes to understand his Word."

#### LOSS OF EMPLOYMENT.

It is very common in New England for Jehovah's witnesses to be arrested for no cause, to have their property destroyed for no cause, and to lose their employment for no cause,



except that they are hated by the Devil and those who have the spirit of their father, the Devil. This was pretty well stated in a noble, broadminded letter to Donald E. Morse, Local No. 340, Vermont, by John P. Burke, in which he said: "You say that one of the members of your local refuses to salute the American flag. I notice that he is a member of the religious sect known as Jehovah's witnesses. You ask me what action your local can take in the matter. I do not see that there is anything you can do about this. The members of this religious sect, Jehovah's witnesses, have religious ideas that seem strange to the rest of us. It seems that they are willing to suffer and endure for their religious convictions. I do not believe you could get this member to salute the American flag, even if you did expel him, and it meant the loss of his job, because members of this religious sect are so convinced that they are right that they are willing to suffer the same as Christ and the early Christians had to suffer.

Now I must confess that I admire them for being willing to suffer for their beliefs. They may be wrong in their beliefs—I do not know about that—but at least they believe so strongly that they are willing to take whatever the consequences may be. I sometimes wish that we had more union members who believed in the trade union movement with the same spirit as the members of Jehovah's witnesses believe in their religion. Now, Brother Morse, I do not believe in persecuting people because of their religious beliefs. If this member doesn't want to salute the American flag, let us forget about it. The American flag will still continue to float, even though he does not salute it."

You would not suppose that anybody would set fire to a man's home because a man was a Christian. Yet that was done at Dover, New Hampshire. Because he is one of Jehovah's witnesses, firebugs set fire to the home of Alfred Schaal between 3:30 and 3:45 in the morning, while Schaal, his wife and seven children were asleep. Though the fire did \$400 damage, no lives were lost.



## **"REPROACHES AND AFFLICTIONS."**

At Boston, Massachusetts, one of Jehovah's witnesses, a portly and muscular colored lady, was interviewing a lady about to leave her home for church, and offered to play a record for her, to which the lady consented. While the record was in process of being played the husband came in, stated that Boston was all right until people came around telling residents whom they should serve. He then broke two records and pushed the witness down stairs. Not wishing to lose her balance, the witness laid hold upon that masculine adornment known as a shirt and removed it with neatness and dispatch. Rather astonished the gentleman said, "Christians don't fight". To this the witness agreed and said, "Quite right. I am merely protecting myself. Jesus was no sissy, and neither are Jehovah's witnesses."

Two of the witnesses up in Vermont in the summertime had the unique experience of a woman rushing out of the house at them when they wanted to play one of these same records in her yard. She finally consented, and, after listening, said, "That is fine, and I apologize for not inviting you in, but I had heard evil reports regarding your work." The local newspapers had given the people what the religionists want—hatred of their best friends.

At Harrison, Maine, one of Jehovah's witnesses was about to play a phonograph record for a young man, when a gentleman, evidently his father, grabbed an axe and made a demonstration of wrath which made the interview impracticable. A few nights later this man's house and barn burned to the ground, destroying 17 cows, some pigs, hundreds of chickens, every stitch of his clothing, and everything else that he possessed. When some heard how he had treated Jehovah's witnesses they were inclined not to give him anything to get another start, but the witnesses themselves heard of it, and let it be known that they wanted his friends to help him in every way they saw fit: they would not return evil for evil. This had a good influence for The Theocracy in the community. Let the Devil pursue his

chosen course as he will, and let Jehovah's people choose the right way and turn not from it to the right or to the left until the end of the way.

Noah Richardson, Jr., wrote in and said that at the first house he called at in Exeter, New Hampshire, the man came out and sat down and listened to what he had to say about dividing the "sheep" from the "goats", and said, "I have been a "goat" long enough; it is time I get on the side of the "sheep." The man took three booklets and was glad, and so was Richardson.

Lloyd B. Stull, one of the witnesses in Maine writes:

"Jehovah's blessing was manifestly on the distribution of the special booklets for the clergy and officials. Some took the booklets and thanked us for them, and some tore them up right in front of us. One man refused his, and slammed the door so quickly that it caught in the door. Another minister threw his off the porch into the yard; but when I went back that way an hour later it was gone.

I was in Richmond, Maine, one afternoon getting some names and calling on some of the people, but had to leave before I completed my work there, as I had back-calls in the evening. The next morning I was there and making inquiry about where Mrs. Joss, one of the School Board, lived, and they said that was the woman that was murdered last night, and they were looking for the one who had done it. One man asked me if I was a stranger in town; and when I said, "No", and told where I lived, he said that they were picking up all the strangers in town. I wonder if Satan had not planned to bring reproach upon Jehovah's name there, as I would no doubt have called on this woman that same evening if I had had the time. Of course, the general impression now is that it was her husband that murdered her. We were assigned territory across the river from Bath, and there was no way to get over to Bath except by crossing a 50c toll bridge. Since then the toll has been removed and we have found the people over there in a very receptive atti-

tude. We did not have the money to pay the toll anyway, and now we do not need it."

### THE PERSECUTION OF CHILDREN.

At Saugus, Massachusetts, the School Board, blinded in their minds by the god of this world, expelled the children of Jehovah's witnesses from school for conscientious refusal to salute the flag; then they deprived a life-long teacher of her job for the same reason; then they threatened mob action, and only a level-headed and honest newspaper editor kept them from carrying out their threats; then when Jehovah's witnesses, at great effort, of time and money, had provided their own School at Saugus, the same crowd prevented work on the building on the day succeeding the Scriptural sabbath, and even on holidays; then the building inspector condemned a job which he knew was an A-1 job, necessitating the pulling down of a firewall; then the electric inspector performed a similiar stunt; then, though the building is mostly windows, they had to put in more windows; then further persecution in the demand, entirely vicious, that a \$200 ventilator system be installed; and then the teacher, who had taught all her life, was forbidden to teach further. That's going some, even for Massachusetts. At length came a meeting before the School Board, a petition that the little folks be re-admitted to the public schools from which they had been unjustly and viciously expelled. The School Board were asked to consider the pledge of allegiance to Almighty God which both the parents and the children are willing to make. They were asked also to read and consider Matthew 18:5-7, which reads:

"And whoso shall receive one such little child in my name, receiveth me. But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea. Woe unto the world because of offences! For it must needs be that offences come; but woe to that man by whom the offence cometh!"

A courageous newspaper editor published the whole splen-

did pledge as set out in the Watch Tower literature; a radio station broadcast it; and Jehovah's witnesses are content to abide by the result. They want only what Jehovah God wants, and they well know that it won't be long now before all their enemies shall lick the dust and never rise to contaminate the earth any more at all. See Consolation No. 560, page "

#### **PUBLIC OPINION IN MAINE—**

**Q** Just a minute, Gene; start there at Kennebunk and the Legion. This part here has already been read.

**BY THE COURT:** Mr. Clark, I have allowed you to have read a great deal that I don't think is necessary. Pick out what you think the Jury should hear. If you read everything in the Book you are just taking up time. For instance, there is a news item in there with reference to every-day news. The entire Book is already in. You can read anything with reference to this matter, but you can't take up the entire evening reading something that has nothing in the world to do with the case.

**BY MR. CLARK:**

I objected to the introduction of this Book, your Honor, on the ground that unless you'd let me read it—that is, I objected to it unless you would let me read it and you said I could read it, if the Court please.

**BY THE COURT:**

If you want to read the rest of it when you go to argue the case you may do so. It certainly isn't unreasonable for me to ask you not to take up time here on something that has no bearing on the case whatsoever.

**BY MR. CLARK:**

I want to show there wasn't any evil intent at the time on the part of this girl in distributing this, if she did distribute it.

**BY THE COURT:**

If there is any matter there that you want to pick out that has any bearing, or connection, with the matter involved in this case, you may have it read, but something

that has nothing to do with it you can't read it. The Jury will have the book with them anyway and they can read it.

**BY MR. CLARK:** In order to get the record straight I want to ask him to begin where he left off and begin here at "Kennebunk and the Legion" and read.

**BY MR. CALLENDAR:**

We object to anything being read there except what is essential to this trial, if the Court please. It is just taking up the time of the Court.

**BY THE COURT:** Let me see what you mean—How in the world could that affect this case here, Mr. Clark?

**BY MR. CLARK:**

Your Honor, I have one here dealing with the Flag salute question called "Common Sense in Maine", I'd like for him to read.

**BY THE COURT:** Allright, he can read that.

**Q** Go ahead, Gene.

**A** "Common Sense in Maine.

The Maine House rejected a bill requiring school children to salute the Flag. Representative Hinckley said: "It is my firm opinion that you can't legislate patriotism. I think any society whose members are convinced they should not salute the Flag should have the right to do as it pleases." Representative Rollins, a World War veteran, said he believed patriotism is something that comes from within and "if you force everyone to salute the Flag you won't know the loyal ones from the disloyal." "

**Q** I want to ask you to say as to these different articles—are those articles there from different newspapers of the Country, including the one you started to read awhile ago?

**A** Yes, sir.

**Q** And that which is included in this indictment?

**A** Yes, sir.

**Q** What newspaper was that quoted from, the one you started to read awhile ago?

**A** Lewiston Daily Sun, a newspaper in Maine.

**Q** That is the article quoted in the indictment; have you

read that article? A Yes, sir.

Q And what newspaper did you say it was quoted from?

A Lewiston Daily Sun.

Q Did it make you disrespect the Government?

A No, sir.

Q Did it make you disrespect the Flag? A No, sir.

Q Have you ever been expelled from School for refusing to salute the Flag?

BY MR. DALE: We object to that.

BY THE COURT: SUSTAINED.

Q Are you a graduate of a School? A Yes, sir.

Q What School? A Beat 4 High School.

Q Read the title of this Magazine to the Jury?

A "Consolation, A Journal of Fact, Hope, and Courage."

Q Read the rest of it.

A "Acts of the Theocracy in New England. Roger Williams, Jehovah's Witness. The Forgotten God. The Penalty to the Nations for Forgetting. Jesuit Cunning Utilizes Communism. Instinct and Reason in Birds."

Q Is that an ordinary magazine like any other magazine of the Nation?

BY MR. DALE: We object; the magazine speaks for itself.

BY THE COURT: Sustained.

Q How often is that magazine published?

A Every two weeks.

Q Does it come through the mail all over the nation?

A Yes, sir.

Q Are you one of Jehovah's Witnesses?

A Any Christian that loves the Lord is a witness to Jehovah.

BY MR. DALE: We object to that. Let him answer the question.

A Sure, I'm a Christian.

Q Are you a Jehovah's Witness? A Yes.

Q That's all.

**CROSS EXAMINATION BY MR. DALE:**

Q You are Mr. Clark's, this girl's attorney, son, aren't you? A Yes, sir.

Q That's all.

**(WITNESS DISMISSED)**

**MRS. JULIA ASKEW:** being produced and first duly sworn testified for the DEFENDANT as follows, to-wit:

**DIRECT EXAMINATION BY MR. CLARK:**

Q You are Mrs. Julia Askew?

A I am.

Q Do you know the defendant in this case, Miss Betty Benoit? A I do.

Q How long have you known her?

A Since April 14th, this year.

Q Where has she been since that time?

A Staying at my house.

Q Did she ever give you that magazine, or one like it?

A I have had the Consolation magazine in my house, but I don't know whether it was this particular one or not. She has given me several of them.

Q Read that and see what issue this one is?

A January issue. January 21st.

Q Have you ever seen that issue?

A No, sir, I never have seen this one.

Q You have seen newer ones than that?

A Yes, sir, but I never have seen that one.

Q Have you seen that magazine there before?

**BY MR. DALE:** If the Court please, we object to that; unless it is the same magazine it has no place in this case.

A I have seen one with a Flag on it.

**BY THE COURT:** He hasn't offered it yet.

Q I WOULD LIKE TO OFFER IT to show how these people stand with reference to the Flag.

**BY MR. DALE:** To which we object.

**BY THE COURT:** Sustained.

**BY THE COURT:** Do you want to make a record on it? If you do, you may.



BY MR. CLARK: I want to have this one marked for identification in order to make my record, if the Court please. (EX. B-Deft. Identification only)

BY THE COURT: Very well.

Q I have here another one "Acts of the Theocracy in New York State—the other one was "Acts of the Theocracy in New England—it shows it is a series of articles. I WANT TO HAVE THIS ONE MARKED FOR THE RECORD. (Ex. C-Deft. Identification only)

BY MR. DALE: We object to the introduction of any of them except the one charged.

BY THE COURT: You may have it marked for identification in order to make your record.

Q I want this one MARKED too for the record, if the Court please. (Exhibit D-Deft. Identification only)

I have another one here I want to offer and have marked for the record, if the Court please. (Ex. E-Deft. Identification only)

BY MR. DALE: We object to the introduction of any of those books in evidence, if the Court please.

BY THE COURT: They are marked for identification so that he might make his record, and that's all.

Q Mrs. Askew, you've read those magazines, have you?

A Some of them I have. The latest issue I haven't had time to read it but I have read some of them.

Q You have read the indictment here against the girls. Now, read this.

BY MR. DALE: We object to that because it has been read to the Jury already.

BY THE COURT: Sustained; the Jury will have it and it has been read to them already anyway.

Q Mrs. Askew, do you know the reputation of this woman for truth and veracity around in your community?

A I do.

Q Is it good or bad? A It is good.

Q You may take the witness.

**CROSS EXAMINATION BY MR. DALE:**

Q I believe this Defendant and Mrs. Babin came to your home on April 14th, this year? A Yes, sir.

Q And they've been there together? A Yes, sir.

Q And you did not know them until they came to your home, did you? A No, sir.

Q That's all.

(WITNESS DISMISSED)

MR. W. T. HORNSBY: being produced and first duly sworn testified for the DEFENDANT as follows, to-wit:

**DIRECT EXAMINATION BY MR. CLARK:**

Q What is your name? A W. T. Hornsby.

Q Have you known Miss Betty Benoit for some time?

A Yes, I've known her since August, last year.

Q Is her reputation for truth—

BY MR. CALLENDAR: We object to that. That isn't the proper way to prove her reputation.

Q Do you know her general reputation for truth and veracity?

A As long as I have known her it has been good to my knowledge.

Q That's all.

**CROSS EXAMINATION BY MR. DALE:**

Q You've known her since when? A Last August.

Q Where do you live? A Lumberton, Mississippi.

Q And what is your name? A W. T. Hornsby.

Q That's all.

**RE-DIRECT EXAMINATION BY MR. CLARK:**

Q Do you know Annie Felix, Mr. Hornsby?

A Yes, sir.

Q Have you ever mailed her any literature and particularly along last winter about January and February?

BY MR. CALLENDAR: That is leading and we object to it.

**Q** Allright, tell what you do know about any literature that might have been sent to her.

**A** I have mailed her literature during the winter months but I can't give the exact dates. I can't give you the name of any month except the last one I know about was this month. I did mail her some I know and I have from time to time since about September last year.

**Q** Did you send her that one: "The Acts of the Theocracy in New England"?

**A** I couldn't be positive about that particular one. I know I sent her literature from time to time but I couldn't identify any particular number because I never pay any attention to the numbers on the magazines.

**Q** You have read that number, have you?

**A** I'm not sure I have,—however, as a rule I do read the magazine as it comes out.

**Q** If you mailed that to her, did you intend any—

**BY MR. DALE:** We object to that because there is no proof whatever that he mailed one at all.

**BY THE COURT:** SUSTAINED.

**Q** Have you read the indictment in this case?

**A** No, sir.

**Q** YOUR HONOR, I would like for him to read this indictment to himself.

**BY THE COURT:** You can get him back in the witness room and let him read it if you want to; there is no use taking up time here doing it.

**BY MR. CLARK:** Allright; go back in the room and do that, Mr. Hornsby.

(WITNESS DISMISSED)

**MRS. W. T. HORNSBY:** being produced and first duly sworn testified for the DEFENDANT as follows, to-wit:

**DIRECT EXAMINATION BY MR. CLARK:**

**Q** Have you known this girl any length of time?

**A** Since about the middle of April, this year.

Q As to her general reputation for truth and veracity, do you know that?

A The number of times she's been in my home she conducted herself very nice.

BY MR. CALLENDAR: We object; that isn't responsive to the question.

Q As to her general reputation amongst the people for truth and veracity, is it good or bad? A Good.

CROSS EXAMINATION BY MR. DALE:

Q You live at Lumberton, I believe? A Yes.

Q This girl has been in your home a few times?

A Yes.

Q That's all.

(WITNESS DISMISSED)

MR. W. W. HOWELL: being produced and first duly sworn testified for the DEFENDANT as follows, to-wit:

DIRECT EXAMINATION BY MR. CLARK:

Q Have you known this defendant, Miss Betty Benoit, for some time? A About four years.

Q Do you know her general reputation for truth and veracity? A Yes.

Q Is it good or bad? A All I know is good.

Q Have you heard the people talk about her that know her? A Yes, sir, I know lots of her friends.

Q That's all.

CROSS EXAMINATION BY MR. DALE:

Q Where are you from, Mr. Howell? A Hattiesburg.

Q Where have you known this girl?

A I met her in New Orleans about 4 years ago.

Q And you have known her intermittently over that four years? A Yes, sir.

Q Have you ever been over to Houma, Louisiana, where she comes from? A No, sir.

Q You never have been there? A No, sir.

Q That's all.

**RE-DIRECT EXAMINATION BY MR. CLARK:**

**Q** You read that magazine with the article that is here in the indictment? **A** I read it since I came here.

**Q** You read the magazine since you came here?

**A** Yes.

**Q** In your reading those two excerpts from that magazine as quoted there; are they the leading articles in the magazine?

**A** No, sir; they are under certain headings quoting from some Maine newspaper, I think it is.

**BY MR. DALE:** We object; it speaks for itself—it is in the book.

**BY THE COURT:** Yes, it speaks for itself.

**Q** Is there anything in that article that shows any disregard or dis-respect for the American Flag?

**BY MR. DALE:** We object; that is the question for the Jury to decide.

**BY THE COURT:** Sustained.

**A** Not in my opinion.

**BY MR. DALE:** We object to the answer of the witness and move that it be stricken.

**BY THE COURT:** Sustained.

**Q** Can't he say what effect it has on his mind in the reading of that, YOUR HONOR?

**BY MR. DALE:** No, sir, because the Jury decides that.

**BY THE COURT:** Yes, that is for the Jury to say.

**Q** THE STATE has undertaken to prove that, if the Court please.

**BY MR. DALE:** No, sir. We introduced the evidence and let the Jury pass on it.

**BY THE COURT:** Go ahead. The Jury is empaneled for that very purpose and it isn't for this witness to say about that.

**Q** That's all.

(WITNESS DISMISSED)

MRS. VIOLET BABIN: being produced and first duly sworn testified for the DEFENDANT as follows, to-wit:

DIRECT EXAMINATION BY MR. CLARK:

Q This is Mrs. Violet Babin? A Yes.

Q You come from Louisiana, I believe? A I do.

Q What business did you come up here for?

A I came here to preach the Gospel of God's Kingdom, and I have been here since April 7th, 1942.

Q Did you at any time ever call at Annie Felix's home?

A I did.

Q Did you leave any literature there?

A I have left literature there. I left a booklet called "Hope."

Q Is that the one there? A It is.

Q Did you leave any magazines there?

A Not that I remember.

Q Mrs. Babin, the day Mr. Bill Owens was there—do you remember him coming to Annie Felix's home and breaking the phonograph?

A Yes, I certainly do. We'd gotten in the house about ten minutes and we were notified by Annie Felix the officers had been there and was coming back. And, as I said, we were in the house about ten minutes when Mr. Bill Owens came in with another officer—who, I don't know—and a taxi driver, and he asked us what we were doing there, and I presented him my testimony card that I offered here in Court the other day.

He told us that he didn't want us in Town and we would have to leave and that he spoke not only for himself but for the people of the City; and he said only over his dead body would we do this work here. He then grabbed the literature and the phonograph and the lecture and threw it out and broke it and set fire to it.

Q Was it your literature that he grabbed?

A No, sir, it was not.

Q Whose literature was it?

A It must have been Annie Felix's because it wasn't mine. I just brought my Bible and Watch Tower and the questions for the Watch Tower;—that is all I had at that time.

Q Mrs. Babin, why were you at Annie Felix's that day?

A We went there to have a Bible Study, or Watch Tower study with her. The Watch Tower is a magazine to help you to study the Bible.

Q This magazine, "Consolation", the January 21st issue, did you leave that issue there with Annie Felix at any time?

A Not that I remember.

Q I mean at any time? A No, sir.

Q Had you been to Annie Felix's before that time?

A I think once before that occurred.

Q Do you know how long it was before then?

A Thursday or Friday.

Q Thursday or Friday?

A Yes, and that took place on Sunday.

Q On that day—Thursday or Friday—did you leave any of those Consolation magazines there?

A No, I left this booklet because Annie had all of the literature except this one. This one was put out April 1st and she didn't have it, and I left a copy with her.

Q Was Annie Felix a subscriber to Consolation?

A She told me she was and the Watch Tower too.

Q You wanted to encourage her in the study of the Bible, did you? A Yes.

Q Is that the purpose you went there for?

A That is the very reason.

Q Did you have any intention of turning her against the Government?

BY MR. CALLENDAR: We object; she isn't on trial herself.

BY THE COURT: She can answer that question.

Q Did you have any intention of doing anything to turn her against the Government or cause her to have disrespect for the Government and the Flag, or creating any



disturbance or racial hatred?

A No, sir; I went there to have a Bible study.

Q Did you have any kind of a booklet except this one?

A When I went there that day I had my Bible, the Watch Tower, and the questions for the Watch Tower.

Q What do you mean by that?

A We studied the Watch Tower and get the important points and make questions on them and when we get together one will give out the questions and the other will look the question up in the Scriptures. It is purely a Bible Study.

Q Did any of you have a Bible there?

A I had mine and Betty Benoit had hers too.

Q Did Annie Felix have her Bible there too? A Yes.

Q Were there any other colored people present?

A There was just we three.

Q When Mr. Owens came in on this particular day that he burned the literature; did he burn very much of it?

A It was a phonograph and a 14 or 15 piece lecture, which was 14 or 15 records of Bible Lectures, and he took the literature from the table of Annie Felix and carried it outside and burned it. He broke the phonograph and the 14 or 15 records.

Q Was that your literature? A It was not.

Q Did he burn your Bible? A No.

Q Did he burn your Hope booklet?

A I didn't have it right at that time.

Q Did he burn your Watch Tower? A No.

Q Did he take your Watch Tower?

A He didn't touch it. He looked at my card and he said, "I've seen those before" and he gave it back to me, or rather he threw it over on the bed, and one of the other officers, or men, picked it up and read it after he threw it on the bed.

Q Did he say anything to Miss Benoit?

A He was speaking to both of us when he told us to get out of Town.

Q Did he say, "You all are distributing this magazine"?

Did he hold all of these magazines up and say, "You all are distributing these magazines"?

A No, he took them and put them in the yard and burned them.

Q He didn't ask you that question? A No.

Q Did he hear that lecture? What was the lecture?

A Children of the King.

Q What King? A Christ Jesus.

Q Did he hear that lecture played?

A No, sir, not while he was there.

Q He didn't hear it while he was there?

A No, he broke it while he was there.

Q Did you undertake to play it for him?

A No; I didn't even answer him except to show him my testimony card. I saw he was so angry it wouldn't have done any good to say anything to him so I kept my mouth shut.

Q You may take the witness.

#### CROSS EXAMINATION BY MR. DALE:

Q When you went to Annie Felix's at any time, did you have the Consolation magazine?

A You mean before Mr. Owens came there?

Q Yes. A No, I didn't.

Q You didn't have it on either visit there?

A No, sir; I didn't carry anything except the current events.

Q Did you ever carry the Consolation magazine with you? A You mean when I was there?

Q Yes. A Not that I remember.

Q Did you carry it with you at any time in Marion County?

A Yes, from door to door but the current event, or current issue, is the only one I carried from door to door.

Q This magazine is published every two weeks, isn't it?

A It is.

Q What was the date of the issue you had when you went—as you testified before—to Aileen Wilks' and offered

her one? A That was about three issues back I think.

Q Wasn't it under date of March 4th? A Yes.

Q And you were there at Aileen Wilks' in May, weren't you? A The beginning of May.

Q From March 4th down to May would be two months, wouldn't it? A About that.

Q And there would have been four or five magazines published in that length of time if it is published every two weeks, wouldn't it? A Well, yes.

Q And you say that on neither trip that you made to Annie Felix's did you carry the Consolation magazine with you? A Not that I remember.

Q You have been convicted already, haven't you?

A That's correct.

Q By a Jury in this Court last week? A Yes.

Q Under this same law? A Yes.

Q When you came to Columbia on April 7th—was it April 7th? A April 7th, yes.

Q When you came to Columbia, Marion County, Mississippi, on April 7th, this year, Miss Betty Benoit was with you, wasn't she? A She was.

Q You and she are both from Houma, Louisiana, aren't you?

A We are from New Orleans—that is, we were from New Orleans at the time we came here.

Q But your home is in Terrebonne Parish in Louisiana, isn't it? A Yes.

Q Both of your homes, I mean? A That's correct.

Q You came from New Orleans here together? A Yes.

Q Did you go to New Orleans together from Terrebonne Parish, Louisiana?

A We have been in New Orleans for the past two or three years working together.

Q For two or three years you worked together in New Orleans? A Yes.

Q And on April 7th, 1942, you and she came here together from New Orleans? A Yes.

Q During the week—or whatever day it was you first went to Annie Felix's—you and she went there together, didn't you? A That Sunday!

Q You'd been there before Sunday, hadn't you?

A Yes, one time.

Q You and Miss Benoit had gone there together that time, hadn't you? A Yes.

Q You and she were there together that day? A Yes.

Q And on Sunday, April 12th, you and she went there together?

A Yes; we went there together that Sunday Mr. Owens came there.

Q You and she room together, don't you? A We do.

Q You sleep together too, don't you? A Yes.

Q You have been together in all of your work for three, four, or five years, haven't you? A Yes.

Q And you've been inseparable since you have been in Columbia in your work? A We work together.

Q Whenever you go out to work together if you have your phonograph and literature, one will carry the phonograph and the other one the literature; is that right?

A Yes.

Q In other words, you divide the load?

A She carries her own and I carry my own.

Q Well, you organize your work and she takes part of it and the other part you take?

A She carries the literature she works with and I carry the literature I work with.

Q You work with different literature? A The same.

Q That is what I mean.

A We are instructed to work with certain literature at certain times.

Q You work with the Consolation magazine sometimes, don't you, Mrs. Babin?

A We work with the current event issue. If we have any back numbers left we work with them sometime at different occasions.

Q When you and she came here on April 7th you brought literature with you, didn't you? A Yes.

Q You brought some back numbers with you too, didn't you? A Not that I remember.

Q Wasn't this one, December 10th, taken from you?

A Not that I remember.

Q You will not say you didn't bring that very magazine into town with you, will you? A I didn't bring it.

Q That's December 10th, 1941—

A The Consolation magazine wasn't sent to us through the mail. About a month after we were here we had our Consolation transferred to us here.

Q That Consolation magazine is published by the Watch Tower Bible and Tract Society, Inc., of Brooklyn, New York, isn't it? A It is.

Q Published by the same Society that published this small one "Hope"? A Yes.

Q And by the same Society that published the Watch Tower magazine? A Yes, sir.

Q And published by the same Society that published the Children's Book? A Yes.

Q All the literature you distribute is published by the Watchtower Bible & Tract Society, Inc., of Brooklyn, New York, isn't it? A Yes.

Q And the Consolation magazine is a part of that literature, isn't it? A Yes.

Q Published and put out all along by this same Society?

A Consolation is a Journal of Fact, Hope, and Courage. It is current news taken from different newspapers.

Q When they mailed this to you, or a subscriber, how is it addressed?

A By their names and addresses.

Q When they mailed it to you, they mailed how many at a time to you? A They mail me seven at a time.

Q And you give them out?

A I leave them with some people.

Q And the reason they come to you is for you to either

sell them or leave, or teach them to other people?

A We don't teach anything.

Q Well, to let them read it then.

A We put them out.

Q Well, the purpose of every bit of that literature you get published by the Watch Tower Bible & Tract Society is for other people to get it into their hands and know what is in it; isn't that the very purpose of all of your literature—the Consolation, Hope, the Watch Tower; and every feature and phase of the literature the Watchtower Bible & Tract Society, Inc., of Brooklyn, New York, publishes is sent to you and your co-workers for the purpose of giving that literature to other people, or selling it to them, or loaning it to them, or reading it to them?

A To those who will take it.

Q And the purpose of you giving it out to people was for them to read it or study it, wasn't it?

A Our purpose—

Q I mean the purpose of it being sent to you? It wasn't sent for you to throw it in a stump hole and forget about it, was it? A No, I guess not.

Q The very purpose of this and every piece of literature sent to you was sent to you—and this came here—for the purpose of taking this literature and getting it before the people, whether you taught it to them, read it to them, sold it to them, or gave it to them—you had no other purpose to come here to the City of Columbia other than to put to work your literature and your teaching of the Bible as you understand it; isn't that right? You wanted to get that before the people here in Columbia and Marion County, didn't you?

A My purpose is to teach God's Kingdom.

Q And this is part of the instrument through which you teach it, isn't it?

A That book there is a Journal of Fact, Hope, and Courage.

Q But that's part of your way of teaching that very thing, or bringing it to the people, isn't it?

A I don't teach.

Q Well, that is part of your way of calling attention to your belief to the people, isn't it?

A You mean the Consolation?

Q Yes, and the booklet Hope, the Watch Tower, and anything else your Company publishes; that is the way you do it, isn't it?

A If anybody picks up a newspaper and reads it, they read current news and this Magazine puts out the current news too.

Q Well, you put that out so other people can see what you have in your Consolation magazine and other literature, don't you? A If they want to read it, yes.

Q When your Publishing Company addresses a Magazine to a subscriber they put that subscriber's name on it, don't they?

A They have it wrapped with the name and address on the wrapper.

Q They don't ever put it on the book at all?

A I don't know about that. When I get mine they are wrapped and my name and address is on the wrapper—it is stamped on there.

Q There is no name and address on this one, is there?

A No.

Q And none on there?

A No. I received some from the Watch Tower—a single copy—which was wrapped and my name on the wrapper.

Q That's published by the Watchtower Bible & Tract Society, Inc., of Brooklyn, New York entitled, "Consolation", isn't it? A Yes.

Q A Journal of Fact, Hope, and Courage? A Yes.

Q That is one of the very issues of your papers and your literature that you handle, isn't it?

A We handle the Consolation magazine.

Q In other words, you are trying to keep from saying you handled this one, but you handled all the other issues; isn't that it?



A I do handle the Consolation magazine, that is correct, but—

Q That'll be all, Mrs. Babin.

**RE-DIRECT EXAMINATION BY MR. CLARK:**

Q Did you put that magazine in the hand of Annie Felix?

A I did not.

Q I mean of that issue? A I did not.

Q When is that issue? A January 21st, 1942.

Q Do you subscribe to everything that is in that magazine?

A No, sir; some of the things I don't even read in there.  
BY MR. CALLENDAR: We object to that, if the Court please.

Q Is that your teachings? A No, it isn't.

Q That's all.

**RE-DIRECT EXAMINATION BY MR. DALE:**

Q What is the date of that issue?

A December 10th, 1941.

Q Did you bring that up here with you? A I didn't.

A As a matter of fact, wasn't that taken from your brief-case when you were in jail in April?

A Not that I know of.

Q Isn't that right; wasn't that very magazine taken from your brief-case when you were in jail in April?

A I don't know whether it was or not; I couldn't say about that.

Q That's all.

**(WITNESS DISMISSED)**

BY MR. CLARK: If the Court please, I want to recall Annie Felix for further cross-examination.

BY MR. DALE: We have dismissed her, told her we were through with her, and she has gone home, I suppose. If you want her I'm afraid you'll have to get her here yourself.

**ANNIE FELIX** (colored) being produced and first duly sworn testified for the **DEFENDANT** as follows, to-wit:

**DIRECT EXAMINATION BY MR. CLARK:**

**Q** Annie, did Mrs. Violet Babin—I mean Miss Betty Benoit, ever give you any literature? **A** No, sir.

**Q** Did Mrs. Babin give you this booklet? **A** Yes, sir.

**Q** I WANT TO INTRODUCE THIS BOOKLET in evidence as Exhibit A-1 to Defendant's testimony—or to the testimony of Annie Felix.

**BY MR. DALE:** We object because it isn't in issue in the trial of this case.

**Q** Did she give it to you?

**A** Yes, sir, she give it to me free.

**Q** When? **A** The first day she was there.

**BY MR. DALE:** We object to that, if the Court please.

**BY THE COURT:** It may be introduced for the purpose of being identified but you can't take up time to read it. (Ex. A-1 Defendant. Identification only.)

**Q** How many pieces of literature did she let you have?

**A** One, the first day.

**Q** And it was one piece? **A** Yes, sir.

**Q** Did she come to your house two times? **A** Yes, sir.

**Q** The next day did she leave any there that day?

**A** She didn't leave any there that Sunday.

**Q** That's all.

**(WITNESS DISMISSED)**

**MRS. T. E. KLEIN:** being produced and first duly sworn testified for the **DEFENDANT** as follows, to-wit:

**DIRECT EXAMINATION BY MR. CLARK:**

**Q** Mrs. Klein, where are you from?

**A** Maoruro, Louisiana.

**Q** Do you know Miss Betty Benoit? **A** Yes, sir.

**Q** How long have you known her? **A** Four years.

**Q** Do you know her among the people and the commu-

nity where she has been and resides? A Yes.

Q What is her general reputation for truth and veracity?

A Everybody thinks very highly of her.

BY MR. DALE: We object; that doesn't answer the question.

Q Is that reputation good or bad? A It is good.

Q That's all.

# CROSS EXAMINATION BY MR. DALE:

Q Where is Maoruro, Louisiana?

A Across the river from New Orleans.

Q It is part of New Orleans just separated by the river, isn't it?

A It is just across the river. You are thinking of Algiers I expect.

Q In Houma, Louisiana, where this woman was born and raised is 70 or 80 miles from there, isn't it?

A Yes, but I have been over there many times.

Q Did you know her before she came to New Orleans?

A Yes, four years.

Q She has been in New Orleans that long, hasn't she?

A In and out of New Orleans.

Q For four years?

A I don't know about before that time.

Q You are of the same belief she is, aren't you?

A I'm not on trial.

Q You are of the same belief, aren't you?

A I'm not on trial.

Q She and you are of the same faith, aren't you?

A I am a servant of Almighty God.

Q That is what she is too, isn't it; and you and she are co-workers, aren't you?

A Sure; we are servants of Almighty God.

Q That's all.

(WITNESS DISMISSED)

MISS BETTY BENOIT: being produced and first duly sworn testified as the DEFENDANT as follows, to-wit:

DIRECT EXAMINATION BY MR. CLARK:

Q You are Miss Betty Benoit? A Yes, I am.

Q Miss Benoit, you heard the State witness say that you said you were distributing, or had been distributing, since you were here this volume 23 No. 583 of the magazine Consolation; state whether or not you distributed that volume at any time since you have been here?

A I have not distributed that magazine here but I have distributed the current issue since April.

Q Do you and Mrs. Babin always take exactly the same books and magazines in your bags when you go out to work?

A I don't know about what literature she carries. I have my own literature and my own separate account; I receive my literature and she receives hers.

Q Did you or not give that magazine to Annie Felix?

A No, sir, I did not.

Q On any occasion?

A I haven't given Annie Felix any literature at any time.

Q Why did you give other people literature and didn't give Annie Felix any?

A Annie had most of the literature, and I was there only a few times.

Q Were you there on the occasion when Mr. Bill Owens came there and broke your phonograph and records?

A Yes; he broke a 14 part phonograph lecture and phonograph.

Q What was the name of that record?

A Children of the King.

Q How long was that lecture? A It had 14 parts.

Q Who was the author of it?

A The Watch Tower Bible and Tract Society and the speaker was Judge J. F. Rutherford.

Q Have you ever read the article in here you are charged

with distributing that is quoted from the Lewiston Daily Sun and a dispatch from Monte Carlo—two news items—have you read those? A Yes.

Q Do you subscribe to those teachings altogether that are quoted there from those papers?

A No, sir. The Consolation magazine is a news journal, and I don't agree with everything it publishes no more than an editor of a newspaper agrees with everything he publishes. I do not subscribe to everything in the magazine.

Q You distribute it because it is a magazine of Fact, Hope, and Courage, do you? Or, do you distribute it because it is a magazine of Fact, or because it is magazine of Hope, or because it is a magazine of courage?

A I distribute it because of all three. It contains interesting facts presented to the people.

Q Do you agree with all things written, or recorded, in it?

BY MR. DALE: We object to that, if the Court please.

BY THE COURT: OVERRULED.

BY MR. DALE: We except.

Q Do you agree with all of the articles in the magazine, whether quotations from other newspapers or not?

A No, I do not.

Q Do you agree with all of that which is said there with reference to the flag salute and the flag standing for the Supreme Court; do you agree with that definition of the Flag?

A I think the Flag stands for freedom.

Q You do not agree with that definition there any more than you agree with the rest of it?

BY MR. DALE: We object; that has no place in this record. It is leading anyway.

BY THE COURT: You are practically telling her what to say in answer to your questions, Mr. Clark. Objection SUSTAINED.

Q I believe she answered and said she didn't agree with that article anyway. Did you answer it, Miss Benoit?

A I answered it.

Q What was your purpose at Annie Felix's home that day and at other people's homes since you have been here in Columbia?

A I came here to distribute the message concerning the Lord's Kingdom and encourage Bible study—to encourage people to look into the Bible and consider the facts; and to show the people the things in the Bible concerning the Lord's Kingdom and for their own welfare.

Q Did you come here as a teacher?

A No; the Lord Jesus Christ is the teacher and his teachings are recorded in the Bible, and we merely call attention to things like that.

Q In distributing that magazine, do you always read every line in it before you distribute it?

A I get so much of the literature I don't always have time to read each one. Sometimes I read the Consolation magazine, but mostly I read the Watch Tower because it is the Scriptural one of the two. I don't always get time to read all of it, however.

Q Between the two—the Consolation and the Watch Tower—which do you study and read carefully?

A The Watch Tower is the Scriptural magazine. Everything in it is from the Scripture and the Consolation is merely a news journal. It is like a newspaper. The Editor of a paper publishes everything whether he agrees with it or not, but he publishes it for the consideration of the people. That is the way the Consolation is. To me the Watch Tower is the important one. We study it and have weekly Bible study on it.

Q Was your purpose in this Town to injure this great Government of ours?

A No, sir. This Government provides me with the freedom to do this work and I love it. My purpose was to exercise the freedom to worship God. My purpose was not to destroy the very freedom I seek to exercise.

Q Since you have been here, have you taught anybody

to oppose the Government's military activities or pointed out to anybody that they should oppose it in any way?

BY MR. DALE: We object to that; she isn't charged with any such act; the literature speaks for itself anyway.

Q You say you did not distribute this one?

A No, sir, I did not. I distributed the current issues.

Q Did you see Mrs. Babin distribute it that day? The day Mr. Owens came to Annie's house?

A That day I don't think either one of us had any literature with us except the Watch Tower—I know I didn't.

Q Did Mrs. Babin distribute anything on Wednesday or Thursday before that Sunday to Annie Felix—I mean the first day you were there?

A I think she left the Hope booklet there that day.

Q Have you been back there any more since the breaking of the phonograph records by Mr. Owens?

A No, sir, I don't think so. I didn't go back.

Q According to Mr. Owen's statement he picked up off of the table there at Annie Felix's a bunch of books and magazines big enough to build a fire with—whose books were they so far as you know?

A They were not mine and they were not Mrs. Babin's, so they must have been Annie Felix's.

Q You couldn't swear they were Annie Felix's could you? A No.

Q But he got them off the table at Annie Felix's house?

A Yes.

Q You did not take them there?

A I didn't hand Annie Felix any literature of any kind.

Q Did you mail her any of any kind? A No.

Q According to Mr. Owen's statement he picked up the literature on the table and said to both of you "Did you all distribute this literature", or, "this magazine", holding out to you that particular magazine from all of the rest and asked you if you distributed that magazine; did he do that, Miss Benoit?

A He didn't ask if we distributed any of it. He picked



it up and took it out and burned it; and that's all there was to it.

Q While he was there, did he read those magazines?

A No, he did not. He just marched in and begun to rave and he madly picked up everything within his reach that looked like literature and carried it outside and destroyed it. He didn't ask me anything and I didn't answer him anything.

Q Did you talk to him at all?

A No; he was so angry it wouldn't have done any good to speak to him.

Q Do you remember whether or not Mrs. Babin said anything to him?

A She handed him her testimony card when he came in.

Q Did she discuss the matter with him at all?

A No; if she answered any question it was in answer to a question he asked her as to what we were doing there and she answered it by handing him her testimony card.

Q That's all.

#### CROSS EXAMINATION BY MR. DALE:

Q What kind of a brief-case do you have?

A It is a little bity brown one.

Q And you carry your literature in that brief-case, don't you? A Yes.

Q You've had that ever since you've been in Columbia, haven't you? A Yes.

Q You and Mrs. Violet Babin came to Columbia together on April 7th, this year, didn't you? A We did.

Q You came in on the same conveyance, whether bus, car, or train, didn't you? A Yes, we came in a car.

Q You came in the same car? A Yes.

Q Whose car was it?

A Some friend's from New Orleans.

Q That friend had loaned you that car and you and Mrs. Babin had it in your possession and were using it together; is that right?

A The one who loaned it brought us.

Q You kept the car, didn't you? A No, we did not.

Q You came here together in the same car the same day?

A Yes.

Q And you have roomed together ever since you have been here, haven't you? A Yes.

Q And since that time you have slept together, haven't you? A Yes.

Q And while you've been here you have worked together too, haven't you?

A Well, mostly we worked together but sometimes we worked different territory.

Q Sometimes you will take a street and you'd stop at one house and she'd go to the next one? A Yes.

Q You'd go past the house she took and go to the next one and she'd pass the one you took and go to the next one; that is the way you arranged it, isn't it?

A That is correct. Sometime, however, we work in entirely different territory.

Q But sometime you work a street and alternate the houses on the street as I described?

A Yes.

Q You'd go from house to house on a street alternating the houses between you? A Yes.

Q Or you sometime go to another section of Town and her to another section of town? A That is correct.

Q When you go to work you take your Bible, your Watch Tower, the Hope booklet, the Children's Book, and the Consolation magazine, and all the literature published by the Watch Tower Bible & Tract Society of Brooklyn, New York, don't you? A Yes.

Q This Consolation here is part of your standard work, isn't it? It is published every two weeks—every Wednesday every two weeks—regularly by the same Company that publishes Hope, the Children's Book, and all of those?

A Yes.

Q It is a standard publication of your Bible and Tract

Society, isn't it? A Yes.

Q Published regularly and according to the Acts of Congress with a regular subscription rate, and so forth?

A Yes.

Q That is part of your standard work? A Yes.

Q When you came to Columbia from New Orleans, did you bring any literature with you? A Yes.

Q What issues of the Consolation magazine did you bring?

A We came here in April and we probably had some March issues.

Q When you came here and when you were arrested and placed in jail wasn't this December issue taken out of your hand-bag, or brief-case, while you were in jail? That is the December issue there, isn't it?

A I don't know whether it was taken from my bag or not.

Q Will you say this December 10th, 1941, issue was not taken from your hand-bag while you were all in jail?

A I don't think it was taken out of mine because I carried only the current issues.

Q You will not say it was not taken from your hand-bag while you all were in jail here, will you?

A I couldn't say it was or wasn't but I know I carried the current issues.

Q But you will not say it was not, will you?

A I didn't see any magazines taken out of my bag.

Q That one is dated December 10th and then there would be another one December 24th, then one January 10th and one January 21, I believe—there is two issues between those two at any rate?

A I was in Houma when those were coming out.

Q There's two issues between those? A Yes.

Q This one was published December 10th, then another one two weeks later, and two weeks later another one, and then January 21st? A Yes.

Q You will not say that didn't come out of your brief-case?

A I didn't have an issue that far back in my case.

Q It didn't come out of there, did it?

A No, sir, I don't think it did.

Q Is that your publication there? A Yes.

Q That is published by the Watch Tower Bible & Tract Society of Brooklyn, New York, isn't it? A Yes.

Q That very one in evidence here was published by your Company—the Watch Tower Bible and Tract Society of New York—too, wasn't it? A Yes.

Q What does it say that is?

A "Consolation, a Journal of Fact, Hope, and Courage."

Q Is it a Journal of Fact? A Yes, it is.

Q You take it as a Journal of Fact, do you? A Yes.

Q The things in there are facts, are they?

A It is a fact that article was published in a newspaper, yes.

Q Well, you say it is a Journal of Fact, Hope, and Courage, don't you? A Yes.

Q You don't say it is a journal of somebody else's opinion, do you? A It certainly is.

Q You don't say that, do you?

A I don't agree with everything in it.

Q That is published by the Watch Tower Bible & Tract Society of Brooklyn, New York, isn't it? A Yes, sir.

Q And it is part of your standard literature that you carry around with you in your work? A Yes.

Q You say that came out at a time when you were in Houma? A Yes.

Q Did you ever handle any of that issue? A Yes.

Q So that, you have handled that very issue? A Yes.

Q You have had that very issue in your possession?

A Yes.

Q There is no doubt that in your work you have handled that very magazine right there? A Yes.

Q But you tell the Court and the Jury that since you

were indicted in this Court for distributing it, you didn't handle it in Marion County?

A That was distributed at the time I was in Houma, Louisiana. I disbursed, or distributed rather, the current issues as they came in.

Q All right; you take the Watch Tower, the Consolation, Hope, Children's Book, and anything else published by your company and carry it with you and you give it to people, or sell it to them, or read it to them, or teach it to them, don't you? A I don't teach anything.

Q Do you read it to them? A I distribute it.

Q You distribute it? A Yes.

Q And if they want to read it, well and good? A Yes.

Q You don't ask them to read it?

A It is up to the person as to whether they want to read it.

Q You don't suggest that they read it?

A That's the very purpose of distributing it.

Q That is right, the very purpose of distributing it is to get them to read what is in there, isn't it? A Yes.

Q Whenever you carry that one with you—or any of them—and distribute them, you want the people to read what is in them, don't you?

A Why, certainly. It is for their consideration. It is like the editor of a paper,—when he publishes anything he wants the people to read it and consider it for themselves whether he agrees with it or not.

Q You say that is a Journal of Fact? A Yes.

Q There is an article right there at the top of that page, "The North Carolina", read that.

A "THE NORTH CAROLINA.

At the commissioning of the North Carolina, the \$70,000,000 and 35,000-ton battleship, the printed program said it is to be a "Good Church ship". The chaplain prayed for it, and John McNulty, reporter for the New York Daily News, said that when he did so the waves "seemed to be beckoning, like calling a fighter from his corner in the prize ring." And

'so endeth the reading of the morning lesson.'

You may get into the Kingdom without a sense of humor, but you are missing a lot of fun. Men were made to laugh."

Q And that is published here in this magazine by your Publishing Company about the commissioning of the \$70,000,000 North Carolina battleship? A Yes.

Q Is that an editorial quoted from some other paper?

A Part of it is.

Q Does it say it is quoted from another paper?

A Part of it was quoted by a reporter of the New York Daily News.

Q Was that last paragraph quoted from a Daily Newspaper, or from the New York Daily News, or is that some of the facts put out by the publishers of this Book?

A —

Q You said, I believe, you don't agree with everything in those books, or magazines? A I do not.

Q Does that keep you from putting them out?

A It is up to a person as to whether they agree with something.

Q You are willing to put out things for people to read and listen to if it is construed, or misconstrued, to mean disrespect for our Flag, are you?

A I'm not responsible for that.

Q At any time in your work, have you found anything in any of your literature that has caused you to refuse to put it out? A No.

Q Whatever comes out in your literature you stick it out and distribute it for the purpose of having people to read it—that is what you said awhile ago, that that was your purpose, didn't you? A Yes.

Q That's all.

#### RE-DIRECT EXAMINATION BY MR. CLARK:

Q Is it your purpose when you hand out the magazines for the people to take it and read every article or quotation in it; do you want them to read every line of it from one

end to the other? A Yes.

Q Do you want them to believe every line from one end to the other?

A No, it is merely for their consideration.

Q Do you believe it all?

A No, sir. I put it out to be considered by the people just like a newspaper publishes quotations from Hitler—it is merely for their consideration.

Q Have you put out books that quoted Hitler and the Pope—Miss Benoit, do you believe that article there from the quotation of the Catholic Journalist?

A No. I have put out publications with quotations from Hitler and the Pope, but that doesn't mean that I believe it. That is the freedom of the press—to be able to read it and consider it.

Q Do newsboys put out newspapers because they believe everything in them?

BY MR. DALE: We object; that has nothing to do with this.

BY THE COURT: That is too far afield. SUSTAINED.

Q All right, Miss Benoit, is there anything else you want to tell the Jury? Just go ahead if there is.

BY MR. DALE: She can answer any questions: but we don't think it is right for her to say anything else to the Jury she feels like saying.

Q All right then, Mr. Dale. I want to ask you this question, Miss Benoit, in that editorial of the Lewiston Daily Sun, which you say you did not put out, do you believe that editorial of the Lewiston Daily Sun? He referred to the Flag Salute rule and maybe one statement he made referred to the Flag as being contemptible; do you think that is the truth?

BY MR. DALE: We object to that, if the Court please.

Q Do you agree with that statement?

BY MR. DALE: If the Court please, we object to that.

BY THE COURT: Overruled. BY MR. DALE: We except.

A No, sir. For instance the Consolation published that



article by that editor and I certainly don't think the Flag is contemptible. I consider it an emblem of freedom of this Country. I do not agree with everything the magazine says; I merely put it out as I said for the consideration of the people. Why, things like that are published every day in the newspapers—

BY MR. DALE: Just answer the question, Miss Benoit, and don't lecture the Jury.

Q That's all.

#### RE-CROSS EXAMINATION BY MR. DALE:

Q I notice he asked you if you thought the flag is contemptible, but he didn't ask you if you thought the rule requiring the Flag to be saluted is contemptible; what do you say about that? You don't think the rule requiring the Flag salute is contemptible?

A The rule requiring and commanding you to salute it?

Q Yes; you said you didn't think the Flag is contemptible, but you just won't go to town when it comes time to salute the Flag, will you?

A A woman is not required to salute the Flag.

Q That's all.

(WITNESS DISMISSED)

MRS. VIOLET BABIN: is recalled to the stand for FURTHER CROSS examination as follows, to-wit:

#### FURTHER CROSS EXAMINATION BY MR. DALE:

Q Do you own a brief-case? A Yes.

Q What kind do you own?

A One with two handles that you take in your hand.

Q What color is it?

A White and black.

Q How does it fasten?

A With a zipper, I think.

Q You don't have it with you? A No.

Q You don't remember whether it has a zipper top or

not? A I think it has.

Q Well, do you know? A Yes, it does.

Q When you and Miss Betty Benoit were in jail back in April, did you have your brief-case with you?

A I think the officers took it away from us.

Q Both of them? A I think so.

Q Did you have any literature in yours?

A I think so. We had the literature we were working with.

Q How far back were the dates of the issues you had? Did you have any issues of the Consolation in it?

A Not that I remember.

Q You don't say you didn't have this very one right there, December 10th, do you? Will you say you did or did not have that one dated December 10th in your brief-case when you were in jail out here in April?

A I had the current issues.

Q Did you have that one?

A I couldn't have if I had the current issues.

Q Did you have one dated December—anytime in December—in your zipper brief-case when you were in jail in April? A Not that I know of.

Q Did you or not?

BY MR. CLARK: She has answered the question.

A I don't know whether I did or didn't.

Q You will not deny that you did?

A I can't say whether I did or not.

Q You will not deny that this very magazine here dated December 10th, 1941, was taken from your zipper brief-case while you were in jail in April?

A I can't tell you if it was there or not. I couldn't say.

Q If it wasn't in there it couldn't have been taken out of it, could it? A I don't know.

Q You will not say it was not, will you?

A I couldn't say it was or wasn't.

## RE-DIRECT EXAMINATION BY MR. CLARK:

Q Is it a fact you could have had this issue even for your own study or own reading and not be distributing it?

A That is correct. We usually distribute the current issues.

Q You could have been reading it while the other girl was working? A Yes.

Q You were not working with old Magazines like that? BY MR. CALLENDAR: We object to that. It is leading to say the least.

Q Well, were you working with this issue, or this other issue, at any time since you've been here? A No.

Q You could have had an issue like that in your briefcase for your own use? A Maybe I could have.

Q That's all.

## RE-CROSS EXAMINATION BY MR. DALE:

Q If you could have had that one you could have had one dated January 21st, 1942 too, couldn't you?

A I couldn't say, but I didn't put it out at Annie Felix's.

Q That's all.

## RE-DIRECT EXAMINATION BY MR. CLARK:

Q If you had one like this for your own purpose and use, did you work with that kind of magazine from time to time in the City of Columbia? A I did not.

Q Did you leave that magazine at Annie Felix's house?

A No, I did not.

## RE-CROSS EXAMINATION BY MR. DALE:

Q Have you at any time handled that issue of the magazine? A Yes, in January.

Q So that, you have handled this very magazine?

A In the month of January when it was a current issue.

Q There is no doubt that you have had that magazine in your possession and distributed it? A Yes, I have.

RE-DIRECT EXAMINATION BY MR. CLARK:

Q Where were you in January?

A Brookhaven, Mississippi.

Q And if you distributed it anywhere it was in Brookhaven, was it? A Yes.

Q How many did you get of that current issue?

A Seven.

Q How many? A Seven of each two times a month.

Q Is that the main book you distributed?

A The Children book and End of Axis Powers is what we were working with in January. The Hope booklet came out in April and since that time we have been working with Hope and Children.

Q Does your Company direct you in that kind of work?

A Yes.

Q They tell you what kind of books to distribute?

A Yes.

Q Tell how the Company directs you to work?

BY MR. DALE: We object to how the Company directs them to work.

BY THE COURT: Sustained.

Q That's all.

(WITNESS DISMISSED)

(DEFENDANT RESTS)

(STATE RESTS)

(JURY RETIRES)

BY MR. CLARK: Comes the Defendant, by her Attorney of record, and moves the Court to direct the Jury to bring in a verdict of NOT GUILTY.

BY THE COURT: OVERRULED. BY MR. CLARK: We except.

(JURY RETURNS)

### **Reporter's Certificate**

I, Uhl Poole Fornea, Official Court Reporter in and for the Fifteenth Judicial District of the State of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of my stenographic notes taken on the trial of the cause of STATE OF MISSISSIPPI vs. BETTY BENOIT, No. 1826, charged with Distributing Prohibited Printed Matter, on the docket of the Circuit Court of Marion County, Mississippi.

I do further certify that I have this day mailed to HON. SEBE DALE, District Attorney, Columbia, Miss., and HON. BERNARD CALLENDAR, County Attorney, Columbia, Miss., Counsel for STATE and to HON. G. C. CLARK, Waynesboro, Miss., Counsel for the Defendant, the following letter, to-wit:

"You are hereby notified that I have this day filed with Mr. J. O. Tolar, Clerk of the Circuit Court of Marion County, at Columbia, Miss., the original and carbon copy of my stenographic notes taken on the trial of STATE vs. BETTY BENOIT, charged with Distributing Prohibited Printed Matter, No. 1826 on the docket of said Court."

I do further certify that my fee is \$14.25.

This the 17 day of July A. D. 1942.

Uhl Poole Fornea  
Official Court Reporter

## Verdict of Jury

We the jury find the defendant guilty as charged.

Filed

June 23, 1942

J. O. Tolar,

Clerk

## Judgment of the Court

No. 1826

THE STATE OF MISSISSIPPI

v.

MISS BETTY BENOIT

Charge, Distributing Prohibited Printed Matter

Comes the District Attorney who prosecutes the pleas for the State of Mississippi and announces ready for trial. Comes also the defendant, Miss Betty Benoit, in her own proper person accompanied by her Attorney, Hon. G. C. Clark, and she being arraigned on an indictment charging her with the crime of DISTRIBUTING PROHIBITED PRINTED MATTER, and being required to plead to said charge entered a plea of "NOT GUILTY."

Whereupon, came a jury of twelve good and lawful men of Marion County, Mississippi, to-wit: Enos Langston and eleven others, of the regular pannel for the week, who were accepted by the State and by the defendant to well and truly try the issue joined, and after hearing all the evidence and argument of counsel and receiving the instructions of the Court they retired to consider of their verdict and returned into open Court with the following verdict to-wit: "WE THE JURY FIND THE DEFENDANT GUILTY AS CHARGED IN THE INDICTMENT."

Whereupon, the defendant was placed at the bar and was asked by the Court if she had anything to say in bar of sentence, says naught.

Whereupon, it is considered and so ordered by the Court that the defendant, Miss Betty Benoit, for the said crime of **DISTRIBUTING PROHIBITED PRINTED MATTER** be and she is hereby sentenced to serve a term for the duration of the war and not to exceed **TEN YEARS** in the Mississippi State Penitentiary, and she stands committed.

### **Motion for Appeal**

No. 1826

Motion to the Circuit Court for an Appeal.

**THE STATE OF MISSISSIPPI**

*v.*

**MISS BETTIE BENOIT**

In the Circuit Court of Marion County, Miss.,

Fifteenth Judicial District June Term, 1942.

Comes the above named defendant, Bettie Benoit, in the above styled cause, by her attorney and prays an appeal with supersedeas to the next term of the Supreme Court of the State of Mississippi, and tenders herewith a good and sufficient bond for such appeal.

Bettie Benoit

By G. C. Clark

Attorney for defendant.

Filed

6/23/42

J. O. Tolar,

Circuit Clerk

### **Order Allowing Bail Bond**

No. 1826

**THE STATE OF MISSISSIPPI**

*v.*

**MISS BETTY BENOIT**

Charge, Distributing Prohibited Printed Matter

Comes now the defendant on Motion to be allowed a



bail bond to await the action of the Supreme Court of the State of Mississippi, and after considering said Motion, the Court is of the opinion that said Motion should be sustained.

Whereupon, it is the order of the Court that the defendant be allowed bail and the bond to be made in the sum of \$1500.00 to be approved by the Sheriff of Marion County, Mississippi.

### **Petition to the Circuit Clerk for an Appeal**

No. 1826

IN THE CIRCUIT COURT OF MARION COUNTY,  
MISSISSIPPI FOR THE FIFTEENTH JUDICIAL  
DISTRICT, JUNE TERM, 1942.  
THE STATE OF MISSISSIPPI

v.

BETTIE BENOIT, *Defendant*  
TO THE CIRCUIT CLERK OF MARION COUNTY,  
MISSISSIPPI.

Your petitioner, the undersigned respectfully state that at the June Term 1942 of the Marion County Circuit Court on the      day of June, 1942, defendant was convicted of Sedition and violating House Bill 689 of the Regular Legislative Session, 1942, and sentenced to the State Penitentiary until the United States signs a peace treaty with Japan, Germany and Italy, not exceeding ten years. Feeling aggrieved at this conviction, they pray an appeal to the Supreme Court and tender herewith good and valid appeal bonds and affidavits of inability to make cost bond or to deposit sufficient amount of cash with the clerk of this court to pay cost in this case and ask that an appeal be granted.

Bettie Benoit

By G. C. Clark

Attorney for Defendant

Filed this the 23 day of June, 1942.

J. O. Tolar

Clerk.

**Notice to Court Reporter  
to Prepare Record for Supreme Court**

No. 1826

IN THE CIRCUIT COURT OF MARION COUNTY,  
MISSISSIPPI FOR THE FIFTEENTH JUDICIAL  
DISTRICT, JUNE TERM, 1942.  
THE STATE OF MISSISSIPPI

v.

BETTIE BENOIT, *Defendant*

I do hereby hand you this notice to prepare record for Supreme Court from your stenographic notes in the above styled and numbered cause.

The defendant has petitioned and obtained an appeal in said case, this the        day of June, 1942.

Bettie Benoit

Defendant

By G. C. Clark

Attorney for Defendant

I have this June 23, 1942 received the above notice of appeal in above styled cause.

Uhl Poole Fornea

Court Reporter

**Appeal on Affidavit of Inability to Give Cost Bond,  
or Deposit Amount of Cost from Circuit Court  
in Criminal Cases**

No. 1826

IN THE CIRCUIT COURT OF MARION COUNTY,  
MISSISSIPPI FOR THE FIFTEENTH JUDICIAL  
DISTRICT, JUNE TERM, 1942.  
THE STATE OF MISSISSIPPI

v.

BETTIE BENOIT, *Defendant*

I, Bettie Benoit, do solemnly swear that I am unable to give a cost bond or to deposit a sufficient amount to cover

all cost and feeling aggrieved by the judgment and conviction of violating House Bill 689 of the Regulative Session 1942, and sentenced to serve in the State Penitentiary until a treaty of peace is made between United States and Japan, Germany and Italy as rendered against me in the Circuit Court of Marion County at the June Term, 1942 on the day of June, 1942. I desire an appeal to the Supreme Court, with stay of judgment.

Betty Benoit

Defendant

Sworn to and subscribed before me on this the 23 day of June, 1942.

J. O. Tolar,  
Circuit Clerk

(SEAL)

### **Agreement of Attorneys to File Original Exhibits**

THE STATE OF MISSISSIPPI

*v.*

MISS BETTIE BENOIT

It is agreed by and between the State of Mississippi represented by Bernard Callender, County Attorney, and Sebe Dale, District Attorney, and the defendant herein represented by Honorable G. C. Clark, Attorney at Law and Attorney of Record and defendant herein named that exhibits in this said case may be sent in the original form to the Supreme Court of the State of Mississippi as a part of the record herein, the same as if fully copied in the records as have been the stenographers notes of the present record, and as such and in such manner shall for all purposes be a part of this record to be considered by the Supreme Court.

It is understood, of course, that some of said exhibits are so short that it is more practical to send copies, but in all instances where such exhibits are too long to be copied

such original exhibits may be noted in the record, and for all purposes be a part of the record on appeal.

Agreed this the      day of July, 1942.

State of Mississippi by  
Bernard Callender  
County Prosecuting Attorney

Miss Bettie Benoit by

G. C. Clark  
Attorney of record for Defendant

### **Appearance Bond to Await Action of Supreme Court**

No. 1826

STATE

v.

**BETTIE BENOIT**

**STATE OF MISSISSIPPI, MARION COUNTY  
IN THE CIRCUIT COURT OF MARION COUNTY,  
JUNE TERM, 1942**

**KNOW ALL MEN BY THESE PRESENTS:**

That, we, Bettie Benoit, Principal and G. C. Clark, Jack Clark, and U. Lowery, sureties, all residents of the State of Mississippi are held and firmly bound unto the State of Mississippi in the penal sum of Fifteen Hundred dollars for which payment well and truly to be made, we jointly and severally bind ourselves, our administrators, heirs, and executors forever.

The condition of the foregoing obligation is such that whereas in the Circuit Court of Marion County on the 23 day of June, 1942, the defendant Bettie Benoit, was convicted of the alleged crime of sedition and of violating House Bill 689 of the 1942 Session of the Legislature and sentenced to serve in the State Penitentiary for the duration of the war but not to exceed ten years and the said Bettie Benoit feeling aggrieved by said conviction and judgment has prayed and obtained an appeal to the Supreme Court.

Now if the said Bettie Benoit shall appear in the Supreme Court and Circuit Court, and abide by and perform such sentence or judgment as may be rendered then this obligation to be void; otherwise to remain in full force and effect.

Given under our hands this the 20 day of June 1942.

U. Lowery, Jack Clark, Betty Benoit, Principal, G. C. Clark, Sureties.

The financial value of this U. Lowery bond is more than one thousand five hundred dollars, and if presented in Wayne County, Miss. I would approve same.

C. L. Westover  
Sheriff Wayne Co. Miss.

The foregoing bond approved this the 23rd day of June, 1942.

O. J. Foxworth

(On Back)

This Bond is Worth over \$2000.00 above the Legal exemptions.

E. E. Sigler  
Chancery Clerk.

### **Clerk's Certificate**

No. 1826

THE STATE OF MISSISSIPPI

v.

BETTIE BENOIT

I, J. O. Tolar, do hereby certify that I have made and am now filing in the records of the above styled cause a true and correct transcript of all the pleadings and other records required of me in connection with this cause.

Witnessed my hand and official seal this the      day of July, A. D. 1942.

J. O. Tolar  
Circuit Clerk

## **Assignment of Errors**

No. 35163

MISSISSIPPI SUPREME COURT  
THE STATE OF MISSISSIPPI

v.

BETTY BENOIT, *Appellant*

Now comes appellant and assigns the following as error in the lower court, to-wit:

### **ONE**

The court erred in refusing and overruling appellant's motion to quash the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said motion is made a part of this assignment of error. Said motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

### **TWO**

The court erred in refusing and overruling appellant's demurrer to the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said demurrer is made a part of this assignment of errors. Said demurrer appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

### **THREE**

The court erred in refusing and overruling appellant's motion for peremptory instruction requesting the trial court to exclude the evidence of the State and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of State's evidence and presented to the court in the manner required by law. Each ground of said motion for peremptory instruction is made a part of this assignment of errors. Said

motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

#### FOUR

The court erred in refusing and overruling appellant's motion for a directed verdict requesting the trial court to exclude all the evidence and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of all the evidence and presented to the court in the manner required by law. The motion for directed verdict reads, omitting formal parts, as follows:

Now comes the above named defendant, Betty Benoit, in the above entitled and numbered cause and files this her MOTION FOR DIRECTED VERDICT, and as grounds therefor says:

#### ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of their rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and ap-



plied to the activity of this defendant because Section 1 thereof deprives this defendant of her inherent rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite, and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2

thereof is unreasonable and in excess of the police power of the State, and is vague, indefinite and a drag-net, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

### EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt, and the undisputable evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

WHEREFORE defendant prays that upon consideration hereof the Court instruct the jury to acquit the defendant and by their verdict say, "We the jury find the defendant not guilty," and render a judgment dismissing the indictment and discharging the defendant with her costs, and defendant prays for such other and further relief as she may show herself justly entitled to.

### FIVE

The verdict of the jury is contrary to law.

**SIX**

The verdict of the jury is not supported by any evidence.

**SEVEN**

The judgment of the court is contrary to the law and the evidence.

**EIGHT**

The undisputed evidence shows that appellant is not guilty.

**NINE**

The statute in question is unconstitutional on its face because, by its terms, it denies and deprives persons in Mississippi of their rights of freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

**TEN**

The statute in question as construed and applied to the facts and circumstances is unconstitutional and denies appellant her rights of freedom of conscience, of press, of speech and of worship of Almighty God, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

**ELEVEN**

The statute in question, both on its face and as construed and applied, violates the *due process* and the *equal protection* clauses of the Fourteenth Amendment to the United States Constitution, and is contrary to Sections 14 of Article 3 of the Mississippi Constitution, because it is vague, indefinite, uncertain, too general, does not furnish a sufficiently ascertainable standard of guilt, enables the court

and jury trying the indictment to speculate, permits arbitrary and discriminatory action and amounts to a dragnet, thus depriving appellant of her liberty without equal protection and due process of law.

### TWELVE

The statute in question is in excess of the police power of the State because it unlawfully invades the realm of legislation impliedly delegated to the Federal Government. The statute is superseded by federal legislation pertaining to the United States flag, the present national emergency and the war now being waged between the Axis powers and the United States Government, and therefore duplicates federal legislation and encroaches upon federal powers, and thus deprives appellant of her rights in violation of the United States Constitution.

### THIRTEEN

The State wholly failed to offer any evidence to show guilt on the part of appellant, since the undisputed evidence showed that appellant was not guilty of the acts charged in the indictment. The State wholly failed to show that the literature distributed by appellant was calculated to encourage disloyalty to the Government, caused racial distrust, disorder, prejudice or hatreds, or reasonably tended to create an attitude of refusal to salute the flag.

### FOURTEEN

Appellant hereby reserves the right to amend the assignment of errors, incorporating and including additional errors reflected in the record at a time before the term begins at which this case will be argued.

G. C. CLARK  
GROVER C. POWELL  
HAYDEN C. COVINGTON  
Attorneys for Appellant

**CERTIFICATE**

I, Hayden C. Covington, attorney for appellant in the above styled cause, do hereby certify that I have this day mailed a true copy of the above and foregoing assignment of errors, postage prepaid, to Honorable Greek L. Rice, Attorney General of the State of Mississippi, at his official Post Office address in Jackson, Mississippi.

Witness my signature, this 3d day of September 1942.

**HAYDEN C. COVINGTON**

Attorney for and of counsel  
for appellant

## Docket Entries

### GENERAL DOCKET C-C, SUPREME COURT OF MISSISSIPPI

Case No. 35163 Betty Benoit *vs* St  te

Circuit Court, Marion County

Record & p.o. filed 8/6/42

Assignment Errors—G. C. Clark, G. C. Powell, Hayden Covington 9/7/42

Carbon Copy Assignment Errors—G. C. Clark, G. C. Powell, Hayden Covington 9/7/42

Petition for Writ of Certiorari—Hayden Covington 10/26/42

Stipulation—G. C. Clark, Hayden Covington, Geo. H. Ethridge 10/26/42

Petition for Writ of Certiorari Sustained 11/2/42  
BH 51A

Writ issued 11/11/42

6 Exhibits—5 copies "Consolation" 1 "Hope" 8/6/42

Brief of Appellant—Hayden C. Covington, et al 11/21/42

6 Carbons Brief of Appellant—Hayden C. Covington, et al 11/21/42

Stipulation as to record: Geo. H. Ethridge—Hayden C. Covington 11/21/42

Submitted 11/23/42 BH 63B

3 copies Brief for State—Geo. H. Ethridge 11/25/42

Exhibits: 6 copies "Hope" 12/4/42

Affirmed 1/25/43 BH 90 In Banc

Petition for Stay, pending appeal to U. S. Court: Hayden C. Covington, G. C. Clark 2/1/43

Carbon Petition for Stay, pending appeal to U. S. Court: Hayden C. Covington, G. C. Clark 2/1/43

Bond for Appeal to U. S. Court 2/2/43

Order Staying Judgment 2/2/43

**Opinions****IN THE SUPREME COURT OF MISSISSIPPI****IN BANC:****No. 35163****(Opinion Rendered January 25, 1943)****BETTY BENOIT v. STATE OF MISSISSIPPI****GRIFFITH, J.**

In this case the roof on behalf of the State is in our opinion sufficient to sustain the verdict of conviction and establishes that a companion of the appellant, who was jointly indicted with her, actually distributed and delivered to one of the state witnesses and in the presence of the appellant the particular pamphlet of literature mentioned in the indictment and entitled "Consolation", as a "Journal of Fact," and that both the appellant and her companion admitted to an officer, a witness for the state, that they were distributing this literature. This so-called "Journal of Fact" contained, among other articles, an editorial from the Lewiston Daily Sun which charged, among other things, that "what that flag salute amounts to is a contemptible, primitive worship", and also that saluting the flag is a "pitiful mockery of education." The pamphlet also contains other language undertaking to create prejudice against and disloyalty to, the American flag among Protestant people by charging that the salute to the flag "originated in the Catholic schools of France", and that saluting in the United States "has covertly been pushed by the Catholic Hierarchy here."

We are of the opinion that what the appellant was found guilty by the jury of doing was in violation of Chapter 178, General Laws of Mississippi 1942, and that this case is governed by the controlling opinion in *R. E. TAYLOR v. State*, No. 35,143, and by both the main and concurring opinions in the case of *Clem Cummings v. State*, No. 35,143, this day decided.

**AFFIRMED.**



IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:

No. 35,163

(Opinion rendered January 25, 1943)

BETTY BENOIT *v.* STATE

SMITH, C. J., dissenting.

It will be necessary for me to state this case in order that one not familiar with the record may know to what questions this opinion is addressed. This indictment charged the appellant with violating that provision of Chapter 178, Laws of 1942, which prohibits oral, written, printed or phonographic preaching or teaching "which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States or the State of Mississippi". The overt act charged in the indictment and to which the State directed its evidence is the distribution by the appellant of a certain publication or journal entitled "Consolation" a Journal of Fact, Hope and Courage", which contained an article under the caption "Public Opinion in Maine", which will be set forth in a footnote hereto.\*

The appellant is a member of an organization known as Jehovah's Witnesses, the members of which are spreading their conception of the Gospel from person to person and house to house. The journal referred to in the indictment is published monthly by the Watchtower Bible and Tract Society, Inc., of New York City, a Jehovah's Witness insti-

\* "The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute the American flag would have been nearer right, nearer sound, if the Court had simply said that it is a matter of State jurisdiction.

"But see what a pitiful mockery of education that salute to the flag is!

"There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute rule amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

"It is probable that not half a dozen members of any State Legislature

tution, and is distributed by the appellant in the course of the work in which she is engaged. The State's evidence discloses or rather the jury was warranted in finding therefrom, that the appellant went to the residence of Annie Felix and gave her a copy of the issue of this Journal containing the article set forth in the indictment. The record does not disclose that the appellant believes that to salute the flag violates God's Word, or that she so taught, consequently no question of religious liberty is here presented.

*[Continued from preceding page]*

can give an adequate definition of what the flag stands for.

"Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside America.

"Try another definition. Perhaps this definition is not so good now as it was ten years ago, but say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

"As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

"But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts to is a required worship by the children that don't know what they are worshipping. They never will learn by that kind of tyranny.

"See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the land, the great principles of the common law that the fathers brought over with them when they came from England.

"To help the children to understand what is the law of the land, what are the rights of an American citizen, to understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

"To help the children to understand the duties of government; and how those duties are divided to the city, the State government, the Federal Government.

"It is good that the Supreme Court of the United States is not going over the country to tell the States what they can do about the flag.—Lewiston Daily Sun." Which said publication or journal also contained an article under the caption "French Catholics Start Flag Salute", in the following words, to wit:

"A dispatch from Monte Carlo says, 'The salute to the flag ceremony, now a daily event in all French schools, originated in the Catholic schools of France.' The type of mind that finds satisfaction in worshipping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here."

The salute of flag provision of this statute may violate, on its face, the constitutional guaranties of freedom of speech and of the press, but it is subject to the criticism that a sufficiently ascertainable standard of guilt can not be found in the words "honor or respect the flag or government of the United States or of the State of Mississippi", *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066, and for that reason should be held to be invalid.

The question presented on the merits of the case is: Is the article, set forth in the indictment and appearing in the issue of the Journal, entitled "Consolation," etc. given by the appellant to Annie Felix within the condemnation of the statute? This article is not addressed to voluntary saluting of the flag, but is simply a vigorous protest, giving reasons therefor, against statutes and school by-laws requiring public school children to salute the flag, and against a decision of the Supreme Court of the United States upholding such a requirement. This the statute does not and could not constitutionally forbid, for full and free public discussion of such matters is well within the constitutional guaranty of freedom of speech and of the press. *Sullens v. State*, 191 Miss. 856, 4 So. 2d. 356. These guaranties are not only for the protection of individual but are also for the protection of the public in its right, fundamental in a democracy, to have the benefit of full and free discussion of governmental policies and of the conduct of government officials, cite authority for which would be supererogatory. The appellant's request for a directed verdict of not guilty should have been granted.

Alexander and Anderson, JJ., concur in this opinion.

IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:  
No. 36163

(Opinion rendered January 25, 1943)

BETTY BENOIT v. THE STATE

ALEXANDER, J., dissenting.

It seems to me that the momentum engendered by the views expressed in the controlling opinions in the companion cases (Taylor v. State and Cummings v. State, decided this day) should have been checked before encompassing the appellant here.

From the pamphlet "Consolation", made the basis of a fear of revolution or sedition, it may be safely assumed that the State has culled its most potent paragraphs. These selections are set forth in the indictment and quoted in other opinions herein. In comparing these vaporings with the daily utterances of our metropolitan press and of men in high places, it becomes difficult to reconcile the internment of the one and applause of the other with an equal protection of the law.

In this connection, attention is called to the fact that part of the language charged to be subversive is quoted from the press, the Lewisburg Daily Sun. No pains have been taken to disclose whether this widely distributed publication has felt the heavy hand of judicial restraint. It serves to emphasize that to invest oneself with an aura of sophistication is a guaranty of immunity. The ill-advised designation of this prohibition of the compulsory salute by pupils in schools as a "pitiful mockery of education" is hardly less positive and much less authoritative than the expression of the Court in Barnette v. Board of Education (decided Oct. 6, 1942 by a three-judge federal court) that its compulsion against conscience "is a petty tyranny unworthy of the spirit of this Republic."

In addition to comments in the dissenting opinion in

Cummings v. State (decided this day) as to the effect of the war emergency, I take occasion to quote the following pertinent and persuasive paragraphs:

"In a time of crisis, particularly, when the things we hold most dear are threatened, we shall find the desire to throw overboard the habits of tolerance, almost irresistible." . . . "I can think of no revolutionary period in history when a government has gained by stifling the opinion of men who did not see eye to eye with it; and I suggest that the revolutionary insistence that persuasion is futile finds little creative evidence in its support." . . . "It is evident from our experience that to limit the expression of opinion in wartime to opinion which does not hinder its prosecution is, in fact, to give the executive an entirely free hand, whatever its policy, and to assume that, while the armies are in the field, an absolute moral moratorium is imperative. That is, surely, a quite impossible position. No one who has watched at all carefully the process of governance in time of war can doubt that criticism was never more necessary. Its limitation is, in fact, an assurance that the unity of outlook is a guarantee that mistakes will be made and wrong done. For once the right to criticise is withdrawn, the executive commits all the natural follies of dictatorship." . . . "Freedom of speech, therefore, in wartime seems to me broadly to involve the same rights as freedom of speech in peace. It involves them, indeed, more fully because a period of national trial is one when, above all, it is the duty of citizens to hear their witness." Laski, *Liberty in the Modern State*, pp. 56-57, 115, 123, 124-125.

Our solicitude should include the danger that in repressing fundamental rights we may lose the war upon our own home front. The conduct of the war is, of course, directed toward its success; but success means not only winning the fight but not losing our freedom.

I realize the difficulty of restricting the bases for decision to the particular case disclosed by the record before us,

as well as the self-control necessary to exclude personal predilections from judgments which should be justified solely by the applicable law. To do otherwise is to destroy the defendant with the very sword with which she had sought to protect her rights. "A judge would err if he were to impose upon the community as a rule of life his own idiosyncrasies of conduct or belief." Cardozo, *The Nature of the Judicial Process*, p. 108.

The absence of a definite legal yardstick by which to measure appellant's 'disloyalty' is as important here as in the other cases mentioned. At the expense of repetition, the opinions voiced must bear fruitage in conduct and such conduct must threaten a clear and present danger, and such danger must be that the functions of the government will be overthrown by force or violence or that mutiny or insubordination be engendered in our armed forces. "A man may have as bad a heart as he chooses, if his conduct is within the rules. In other words, the standards of the law are external standards, and, however much it may take moral considerations into account, it does so only for the purpose of drawing a line between such bodily motions and rests as it permits, and such as it does not. What the law really forbids, and the only things it forbids, is the act on the wrong side of the line, be that act blameworthy or otherwise. Again, any legal standard must, in theory, be one which would apply to all men, not specially excepted, under the same circumstances. It is not intended that the public force should fall upon an individual accidentally, or at the whim of any body of men. The standard, that is, must be fixed." . . . "Finally, any legal standard must, in theory, be capable of being known. When a man has to pay damages, he is supposed to have broken the law, and he is further supposed to have known what the law was." Holmes' *Common Law*, at p. 110-111.

The Chief Justice and Judge Anderson concur in this opinion.

**Judgment****IN THE SUPREME COURT OF MISSISSIPPI****MONDAY MORNING, JANUARY 25th, 1943****MINUTE BOOK BH—PAGE 90****Betty Benoit vs. State****No. 35163**

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Marion County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the June 1942 Term—a conviction under Chapter 178 of the General Laws of Mississippi 1942 and a sentence to the State penitentiary for the duration of the war not to exceed 10 years—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Marion do pay the costs of this appeal to be taxed, etc.



[Same Caption Omitted in Printing]

**Petition for Appeal, Statement,  
Assignments of Error and  
Prayer for Reversal**

**Petition for Appeal**

Being aggrieved by the final decision of the Supreme Court of the State of Mississippi, and the judgments of the courts below, in the above entitled cause, the appellant herein hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

**Statement**

This case is one in which is challenged the validity of a statute of the State of Mississippi, known as Chapter 178, General Laws of Mississippi, which, when stripped of its preamble and sections 2, 3, 4, 5, 6 and 7, which are not involved, reads:

**SECTION 1.** *Be it enacted by the Legislature of the State of Mississippi, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States*

or who gives information as to the military operations, or plants of defense or military secrets of the nation or this State, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years."

This statute was duly passed and approved by the Legislature of the State of Mississippi and is here drawn in question upon the ground that said statute is repugnant to the First and Fourteenth Amendments to the United States Constitution. The Supreme Court of the State of Mississippi is the court of last resort in this cause in the State of Mississippi in which a decision could be had and the decision of that court is in favor of the validity of said statute.

Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U.S.C. sec. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U.S.C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Mississippi, court of last resort in this cause in the State of Mississippi, rendered its decision herein on the 25th day of January, 1943, which became final on January 25, 1943, and by its said decision affirmed the judgment of the Circuit Court in said cause. The opinion of said Supreme Court of the State of Mississippi has not yet been officially reported but

is of record unofficially: *Benoit v. State of Mississippi*, .... So. 2d ..... That opinion appears in the record at page 119, and will appear at 194 Miss. ....

The order and judgment of affirmance by said Supreme Court of the State of Mississippi entered in the office of the Clerk of the said Court on January 25, 1943, became a final judgment on the same day, the date when the opinions were filed in said cause.

### **Assignments of Error**

Now comes appellant in the above cause and files herewith, together with said petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

**FIRST:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

**SECOND:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

**THIRD:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the State's evidence.

**FOURTH:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

FIFTH: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a new trial duly and timely filed.

SIXTH: The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the Constitution.

First and Fourteenth Amendments to the United States

SEVENTH: The Supreme Court of Mississippi erred in failing to hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

EIGHTH: The Supreme Court of Mississippi erred in failing to hold that on its face and as construed and applied the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

NINTH: The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

**TENTH:** The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 4.

**ELEVENTH:** The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 9.

### **Prayer for Reversal**

For and on account of the above errors appellant prays that the said judgment of the Supreme Court of the State of Mississippi hereinabove described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for costs.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

[Same Caption Omitted in Printing]

"

### **Order Allowing Appeal**

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Mississippi on the 25th day of January, 1943, affirming the judgment of the Circuit Court in said cause there titled, to wit, Betty Benoit, appellant v. State of Mississippi, appellee.

It appearing that the appellant in the assignments of

error and in said cause before argument attacked the statute in question on the grounds, as contended by appellant, that it unreasonably abridges freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and that it is void because of vagueness, and in conflict with federal legislation on the same subject, and because there was not evidence to sustain the conviction, all of which contentions were overruled by decision and judgment of the said Supreme Court of the State of Mississippi previously rendered herein.

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of the State of Mississippi became final on January 25, 1943, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

IT IS NOW HERE ORDERED that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Mississippi, and the said judgment of the Circuit Court, in aforesaid cause as provided by law, and,

IT IS FURTHER ORDERED that the Clerk of the Supreme Court of the State of Mississippi shall prepare and certify to the printed transcript of the record, proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States together with all exhibits in the original form, so that he shall have the same in said Court within twenty (20) days from date.

AND IT IS FURTHER ORDERED that security for costs on appeal be fixed in the sum of Two Hundred and Fifty (\$250.00) Dollars and appellant having heretofore presented and filed an undertaking in the sum of One Thousand (\$1000.00) Dollars executed by the National Surety Corporation, which provides for the appearance of the appellant to abide by the judgment of this court and

also to cover the costs of appeal to the United States Supreme Court which has been approved by the court, it is ordered that no additional bond to cover costs be required.

Dated, March , 1943.

SIDNEY SMITH

Chief Justice of the  
Supreme Court of the  
State of Mississippi

[Same Caption Omitted in Printing]

### Citation

To THE STATE OF MISSISSIPPI and

Its Counsel of Record in the above-entitled cause,  
and

To The Attorney General of the State of Mississippi  
Greeting

You are hereby cited and admonished to appear at a Supreme Court of the United States, at Washington, in the District of Columbia, within twenty (20) days from the date hereof, pursuant to an appeal, filed in the Clerk's office of the Supreme Court of the State of Mississippi, where Betty Benoit is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Sidney Smith, Chief Justice of the Supreme Court of the State of Mississippi, this . . day of March, in the year of our Lord one thousand nine hundred and forty-three.

SIDNEY SMITH

Chief Justice of the  
Supreme Court of the  
State of Mississippi



**Bond**

[Filed 2/2/43 Tom Q. Ellis, Clerk.]

IN THE SUPREME COURT OF MISSISSIPPI  
No. 35163

BETTY BENOIT, Appellant, v. STATE of MISSISSIPPI

APPEARANCE and COST BOND ON APPEAL  
to UNITED STATES SUPREME COURT

WHEREAS, on the 25th day of January, 1943, an Opinion was filed by this Court in the above captioned and numbered case, affirming the judgment and sentence of the Circuit Court of Marion County of June 23, 1942, which judgment was adverse to the appellant;

WHEREAS, appellant, Betty Benoit, being dissatisfied with said judgment, desires and intends to file an appeal in said matter to the Supreme Court of the United States;

WHEREAS, it is estimated that the costs of Circuit Court, Supreme Court of Mississippi and Supreme Court of the United States will not exceed the sum of \$250.00;

WHEREAS, by Order of Court a bond in the amount of (\$1000.00) Dollars was fixed by the Court to act as an appearance appeal bond and cost bond on appeal to the United States Supreme Court, to be executed and filed by the appellant;

NOW, Therefore, Know All Men by These Presents, That we, Betty Benoit, as principal, and the undersigned as sureties, do hereby acknowledge ourselves, our heirs, our executors and successors firmly bound unto the State of Mississippi in the sum of (\$1000.00) Dollars. The condition of the bond is such that if the appellant, Betty Benoit, shall prosecute her appeal with effect to the United States Supreme Court and appear before this Court upon the return of the mandate from the United States Supreme Court and

abide by the judgment to be entered and pay all costs incurred in the United States Supreme Court by reason of said appeal that such bond and obligation here incurred shall become null and void; however, if the said Betty Benoit shall not prosecute her appeal with effect and if she fails to appear before this Court and abide by the judgment entered against her the said bond and obligation shall remain in full force and effect.

WITNESS our hands and the seal of the surety corporation on this the 2nd day of Feb. 1943.

(Sgd) Betty Benoit

BETTY BENOIT, Principal

NATIONAL SURETY CORPORATION

By (Sgd) F. Wallace

Its Attorney in Fact As Surety

(SEAL)

(Sgd) G. C. Clark

Witness

(Sgd) C. A. Rawls

Witness

Approved and ordered filed on  
this the 2nd day of Feb. 1943

(Sgd) Sydney Smith

Chief Justice of the Supreme

Court of Mississippi

[Same Caption Omitted in Printing]

### **Statement of Points to Be Relied Upon**

Comes now appellant in the above-entitled cause and states that the points upon which he intends to rely in this Court in this cause as follows:

Point 1. The Supreme Court of the United States should hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 2. The Supreme Court of the United States should hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 3. The Supreme Court of the United States should hold that on its face and as construed and applied, the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

Point 4. The Supreme Court of the United States should hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

Point 5. The Supreme Court of the United States should hold that a general verdict will not support a conviction where the undisputed evidence shows that either ground of

conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

[Same Caption Omitted in Printing]

### **Praecipe for Transcript of the Record**

TO HONORABLE TOM Q. ELLIS, Clerk of the Supreme Court of Mississippi:

You will please prepare a printed copy of the entire record filed in the above entitled and numbered cause in the Circuit Court and the Supreme Court of Mississippi, for the purpose of filing an appeal with the Clerk of the United States Supreme Court. The record should contain the following documents:

(1) All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

(2) Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

(3) Jurisdictional statement.

(4) Order allowing appeal to the Supreme Court of the United States.

(5) Statement of points to be relied upon in the Supreme Court of the United States.

(6) Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

(7) Bond for costs on appeal to the Supreme Court of the United States.

(8) Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

(9) Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

(10) This Praecept for transcript of the record.  
Dated, March . . , 1943.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

[Same Caption Omitted in Printing]

**Notice Calling Appellee's Attention to  
Paragraph 3 of Rule 12 of Rules of the  
Supreme Court of the United States**

Sirs:

You will take notice that paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States provides that "the appellee may file with the clerk of the court possessed of the record" within 15 days after service of the jurisdictional statement and other papers on appeal, a typewritten statement disclosing any matter or ground making against the jurisdiction of the Supreme Court of the United States asserted by the appellant, which rule is hereby called to your attention as is required by the Rules of the Supreme Court of the United States.

Dated, March . . , 1943.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

To: Greek L. Rice  
Attorney General and  
George H. Ethridge  
Ass't Attorney General  
Jackson, Mississippi

[Same Caption Omitted in Printing]

### **Acknowledgment of Service**

On behalf of the Appellee in the above entitled cause, service is hereby acknowledged of a printed copy of the record containing copies of the following documents, to-wit:

1. All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

2. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

3. Jurisdictional statement.

4. Order allowing appeal to the Supreme Court of the United States.

5. Statement of points to be relied upon in the Supreme Court of the United States.

6. Praecipe for transcript of the record.

7. Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

8. Bond for costs on appeal to the Supreme Court of the United States.

9. Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

10. Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

Dated, March , 1943.

**GEORGE H. ETHRIDGE**

*Assistant Attorney General  
Counsel for Appellee*

## Stipulation

It is hereby stipulated that the papers hereinbefore printed comprise true and correct copies of the record from the Circuit Court and Supreme Court of the State of Mississippi and that printing of all exhibits is omitted and said exhibits shall be submitted in original form to the Supreme Court of the United States.

Dated, March , 1943.

GEORGE H. ETHRIDGE  
Assistant Attorney General  
*Counsel for Appellee*

HAYDEN C. COVINGTON  
.117 Adams St.  
Brooklyn, New York  
*Counsel for Appellant*

## Clerk's Certificate

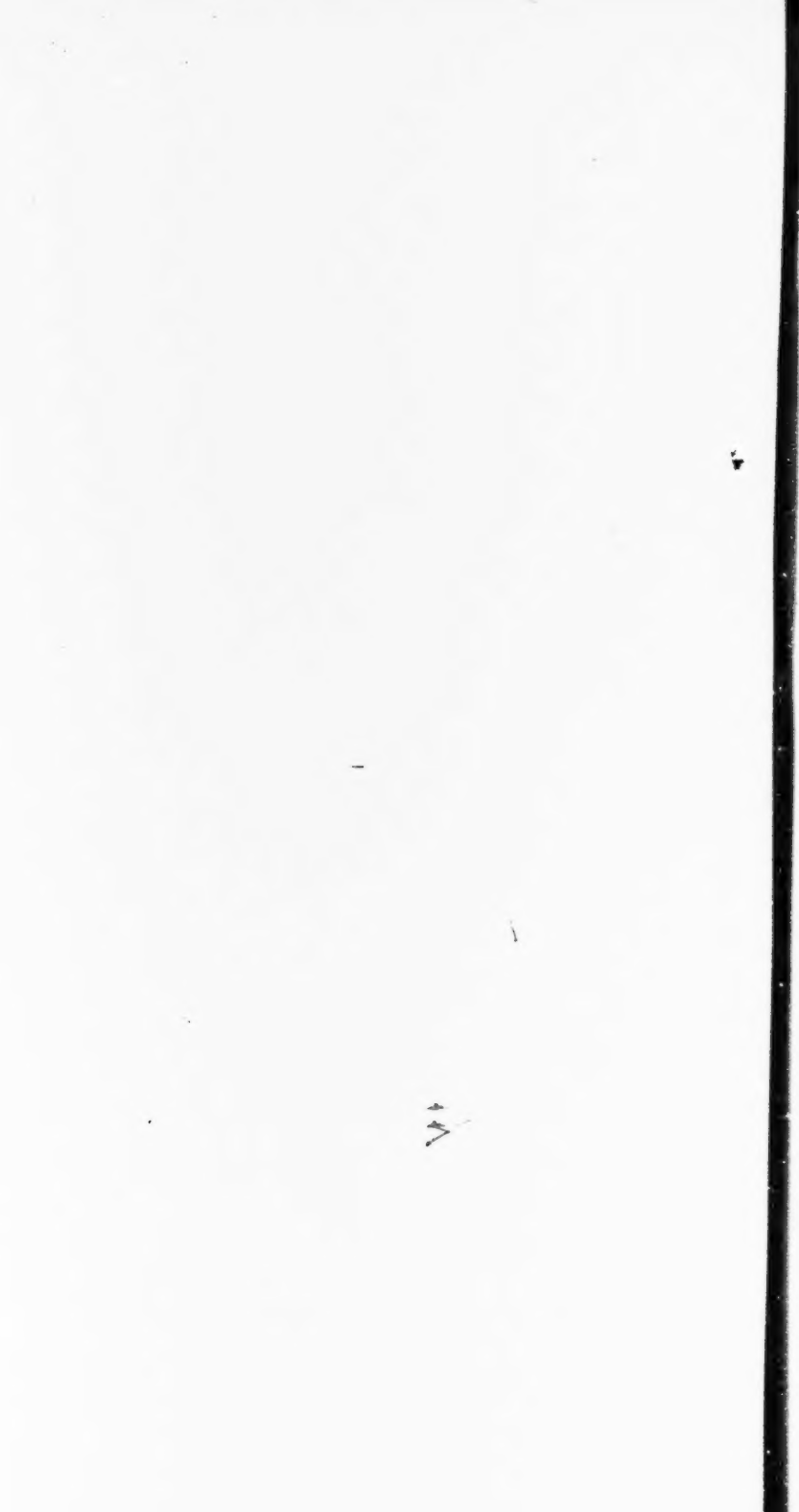
STATE OF MISSISSIPPI, COUNTY OF HINDS, ss

I, Tom Q. Ellis, Clerk of the Supreme Court of Mississippi, do hereby certify that the next foregoing . . . . . pages contain a full, true and complete printed copy of all the papers, pleadings, proceedings requested by the appellant's praecipe for the record on appeal to the United States Supreme Court in the case entitled Betty Ben v. State of Mississippi, and Numbered 35163 on the docket of the Supreme Court of Mississippi as the same appeal is on file in and of record in my office and in our said court.

Given under my hand and seal of office this the 11 day of March, 1943.

TOM Q. ELLIS, Clerk  
Supreme Court of Mississippi  
[SEAL]





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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942



BETTY BENOIT, *Appellant*

*v.*

STATE OF MISSISSIPPI, *Appellee*



APPEAL FROM THE SUPREME COURT OF  
THE STATE OF MISSISSIPPI

## STATEMENT AS TO JURISDICTION

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files a *statement as to jurisdiction* disclosing the basis upon which it is contended that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

### Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

## Mississippi Legislation Questioned

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

### HOUSE BILL No. 689

AN ACT to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.

WHEREAS, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and

WHEREAS, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and

WHEREAS, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative department of the state of Mississippi and of these United States shall enact all laws and do all things necessary to insure domestic tranquility and promote the common defense and general welfare of the people thereof; and

WHEREAS, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state



of Mississippi are a menace to the safety of this State and these United States.

NOW, THEREFORE,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Sec. 2. Any person in possession of maps or parts of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, transportation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the inten-

tion of such persons to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding \$1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the courts, such decision shall not be construed so as to render invalid the remainder of this act.

Sec. 7. That this act shall take effect and be in force from and after its passage.

Approved March 20, 1942.

The Circuit Court which is the trial court and the appellate court, the Supreme Court of Mississippi, held the statute was not unconstitutional and that it was not superseded by federal statutes on the same subject. Such

courts refused to hold that the statute on its face and as construed and applied to the facts abridged the rights of freedom to worship Almighty God, freedom of conscience, of press and speech contrary to the 1st and 14th Amendments to the United States Constitution. Said courts also held that the statute was not vague, indefinite, too general and a dragnet as construed and applied.

### **Timeliness**

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 126) The petition for appeal and other papers required by the rules of this court are filed within three months from the date of such judgment. R. 127-140.

### **Opinions**

The opinion of the Supreme Court is reported in 194 Miss. pp. . . and in 11 So. 2d 689. It appears also in the record pages 119 to 125. The opinion is also attached hereto as appendix to this statement.

### **Statement of Nature of the Case and Rulings of Court Bringing Case Within Jurisdictional Provisions Relied Upon**

In the Circuit Court of Marion County, Mississippi, the appellant, Betty Benoit, was indicted by the grand jury. The indictment returned and filed reads as follows:

### **Indictment**

The Grand Jurors came into open court and reported the following numbered indictment to-wit: 1826.

The defendant appealed.

THE STATE OF MISSISSIPPI, COUNTY OF MARION  
CIRCUIT COURT, JUNE TERM 1942.

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of said county, elected, empaneled, sworn and charged to inquire in and for the county aforesaid, at the term aforesaid, of the court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present, that

MRS. VIOLET BABIN  
AND  
MISS BETTY BENOIT

in said county, on or about the . . . . day of June, 1942, acting together and in conjunction with each other, as individuals and as members of a certain organization or sect commonly known as Jehovah's Witnesses, did then and there wilfully, unlawfully, feloniously, knowingly and intentionally disseminate and distribute certain literature and printed matter designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America, to wit, a certain publication or journal, entitled "Consolation, a Journal of Fact, Hope and Courage", being Vol. XXIII No. 583 of said publication, dated January 21, 1942, published by Watchtower Bible and Tract Society, Inc., which said publication or journal was printed in the English language and contained an article under the caption "Public Opinion in Maine" in the following words, to wit:

"The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute the American flag would have been nearer right, nearer sound, if the Court had simply said that that is a matter of State jurisdiction.

"But see what a pitiful mockery of education that salute to the flag is!

"There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

"It is probable that not half a dozen members of any State Legislature can give an adequate definition of what the flag stands for.

"Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside of America.

"Try another definition. Perhaps this definition is not so good now as it was ten years ago, but say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

"As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

"But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts to is a required worship, worship by the children that don't know what they are worshipping. They never will learn by that kind of tyranny.

"See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the land, the great principles of the common law that the fathers brought over with them when they came from England.

"To help the children to understand what is the law of the land, what are the rights of an American citizen, to

understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

"To help the children to understand the duties of government; and how those duties are divided to the city, the State Government, the Federal Government.

"It is good that the Supreme Court of the United States is not going over the country to tell the States that they can do about the flag.—Lewiston Daily Sun."

and which said publication or journal also contained an article under the caption "French Catholics Start Flag Salute", in the following words, to wit:

"A dispatch from Monte Carlo says, 'The salute to the flag ceremony, now a daily event in all French schools, originated in the Catholic schools of France.' The type of mind that finds satisfaction in worshipping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here."

and which said publication or journal also contained other articles of similar nature, import and purpose, all of which were then and there designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States, in violation of the statutes in such case made and provided and against the peace and dignity of the State of Mississippi.

BERNARD CALLENDER  
County Prosecuting Attorney

A motion for severance was first granted by the court, and the following proceedings therefore were had on the separate trial of Betty Benoit. R. 5-6.

Appellant filed and urged a motion to quash the indictment (R. 12-15), which was overruled and exception allowed. (R. 15) A demurrer to the indictment was duly filed and urged (R. 8-11), which was overruled and exception allowed. R. 11-12.

Appellant pleaded "not guilty". R. 32.

At close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 16-18), which was overruled and exception allowed. At the close of the entire case and when both parties had rested their case appellant duly filed a motion for directed verdict requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 102), which was overruled and exception allowed. R. 102.

Under grounds 1 and 2 of the motion to quash (R. 12-13) the demurrer (R. 8), the motion for peremptory instruction (R. 16), and the motion for directed verdict (R. 102, 112-117), appellant attacked the statute on the grounds that on its face, by its terms, and as construed and applied it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the first and fourteenth amendments to the United States Constitution. R. 12-13, 8, 16, 102, 112-117.

Under grounds 4 and 5 of the motion to quash (R. 13-14), demurrer (R. 9), motion for peremptory instruction (R. 17), and motion for directed verdict (R. 102, 112-117), appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated section 1 of the



Fourteenth Amendment to the United States Constitution. R. 9, 13-14, 17, 102, 112-117.

In the Supreme Court of Mississippi under assignments of error numbers 1, 2, 3, and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 111-112) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and of worship, contrary to the 1st and 14th Amendments. (R. 115) Under ground 11 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the 14th Amendment. R. 115-116.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered and overruled the same. The court in effect held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press contrary to the federal constitution. The court in effect held that as construed and applied that the rights of freedom of speech, and of press were not abridged contrary to the first and fourteenth amendment. The court in effect held that freedom of worship of Almighty God was not impaired by the conviction and judgment. R. 119.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of the validity of the same.

### Statement of Facts

Appellant came to Columbia, Mississippi, with her companion, Mrs. Violet Babin, on April 7, 1942, for the purpose of preaching the gospel of God's kingdom to the people of that community. (R. 76, 90) As ministers sent forth by the Watchtower Bible and Tract Society of Brooklyn, New York, they carried on their evangelistic work by calling from house to house and visiting the people in their homes, there presenting to them the various publications of this Society and encouraging those of good-will to read and study same. (R. 93, 96) This was the same work that appellant and her companion had carried on in their native state of Louisiana for the two years just previous. R. 80.

Among the publications thus distributed by appellant, was *Consolation—A Journal of Fact, Hope and Courage*, which is published every other Wednesday and distributed nation-wide, being entered in the mails as second-class matter under the regulations prescribed by Congress. (R. 69, 93-94) This journal is published by the Watchtower Bible and Tract Society for the special benefit of Jehovah's witnesses, as well as for distribution among the general public. R. 55-67, 84.

The entire magazine was introduced in evidence and the original exhibit furnished this court. An examination of its contents shows it to be essentially a news magazine with editorial comment stressing the relationship of current world events to Bible prophecy. It seeks to untangle the maze of news that daily crowds the public press of the nation, and present the more significant items to its readers in a clear understandable manner. It does not feature war-news, but rather covers other matters of general public concern. Its columns are not subject to censorship. It carries no commercial advertising. Printed in 12 languages, its principal purpose is to enlighten and inform its readers on matters vital to their welfare. Its constant purpose is to get at facts and bring into public view everything that

tends to obscure the important issues. Founded in 1919 as *The Golden Age*, more than six and one half million copies were printed in 1942.

The magazine contains items of general public interest, such as reprints and quotations from various newspapers and magazines both secular and religious (R. 43), historical treatises (R. 55-59), letters and reports from Jehovah's witnesses (R. 59-60, 64-67), news items (R. 68, 90), Biblical treatises (R. 69), interesting facts (R. 69), judicial proceedings, and matters touching upon labor, economics, social science, education, commerce, transportation, political science domestic and foreign, agriculture, science, invention, health, home, travel, religion, philosophy, and many others. *Consolation* No. 583, Volume XXIII, issue of January 21, 1942, the one mentioned in the indictment, listed the titles of the articles appearing in the issue of the magazine as follows: "ACTS OF THE THEOCRACY IN NEW ENGLAND, Roger Williams, Jehovah's witness.—THE FORGOTTEN GOD, The Penalty of the Nations for Forgetting.—JESUIT CUNNING UTILIZES COMMUNISM.—INSTINCT AND REASONING IN BIRDS." R. 69.

The Chief of Police of the Town of Columbia, Mr. Bill Owens, testified that he had received many complaints from the people in the town regarding the activity of appellant and Mrs. Babin. The leading business men and officials had advised him that the literature being distributed by appellant was against the government and tended to cause disloyalty among the people. (R. 41) On April 12, 1942, five days subsequent to appellant's arrival at Columbia, it was reported to Mr. Owens that a Bible study was to be held at the home of Annie Felix, a negro resident of the town, whereupon Mr. Owens went to investigate. R. 33, 46.

Upon his first arrival at the house, he found only Annie Felix at home, but when he came back a short time later, he saw appellant and Mrs. Babin in the house, and he walked

into the room and demanded to know what they were doing there. Mrs. Babin handed him her "testimony card" which briefly explained the mission of Jehovah's witnesses. Beyond that it does not appear that either the appellant, Mrs. Babin, or Annie Felix made any remark to him during his visit. R. 79, 92.

The reason given for appellant's presence at Annie Felix's home on the day in question was that appellant and her companion had come to conduct a Bible study with the aid of the *Watchtower* magazine and the Bible. At the time the officer burst into the room, each had a Bible and was preparing for the study. R. 78, 90.

Mr. Owens appeared to be greatly incensed. He stated that he told Annie Felix that he was going to "get rid" of "that stuff" for her; that he "told her [Annie Felix] and this woman a good bit there that afternoon"; and that he wasn't sure whether or not he had threatened Annie Felix that "she had better not be found there with any more of that stuff in her home". (R. 40) Mrs. Babin testified: "He told us that he didn't want us in Town and we would have to leave and that he spoke not only for himself but for the people of the City; and he said only over his dead body would we do this work here. He then grabbed the literature and the phonograph and the lecture and threw it out and broke it and set fire to it." (R. 76) Mrs. Babin went on: "It was a phonograph and a 14- or 15-piece lecture, which was 14 or 15 records of Bible lectures, and he took the literature from the table of Annie Felix and carried it outside and burned it. He broke the phonograph and the 14 or 15 records." (R. 78) The appellant said: "He just marched in and begun to rave and he madly picked up everything within his reach that looked like literature and carried it outside and destroyed it. He didn't ask me anything and I didn't answer him anything." (R. 92) Mr. Owens stated that he saw many *Consolation* magazines at the home of Annie Felix, and he picked up all that he saw, burning same ex-

cept for the issue of January 21, 1942 (No. 583) which he kept. R. 34.

It is not clear just how the magazine came to be in Annie Felix's house. Annie Felix testified that this event took place in her home on Sunday and that on the previous Thursday Mrs. Babin in the company of appellant had called at her home and left several magazines with her, including the one here in question. (R. 47) The witness stated that Mrs. Babin was the one that had handed her these magazines. (R. 50) Yet upon direct examination for the defendant, Annie Felix said that the appellant had never given her any literature of any kind and that Mrs. Babin had given her only one booklet which she identified as *Hope* and which was entered into the evidence as Defendant's Exhibit A-1. (R. 86) Moreover, Mr. W. T. Hornsby, another of Jehovah's witnesses, stated that he had mailed several issues of the *Consolation* magazine to Annie Felix during the winter, but that he was not sure that the issue of January 21, 1942, was included in those he sent. (R. 73) Appellant and Mrs. Babin repeatedly denied having left any magazines or any other literature, with the exception of the booklet *Hope*, at the house of Annie Felix at any time. (R. 88, 77, 79, 85, 91 101) The reason given was because Annie Felix "had all the literature" except the *Hope* booklet which Mrs. Babin then says she left. R. 77.

Annie Felix identified the *Consolation* No. 583 which had been entered in the evidence as one of several Watchtower publications that were lying on the table in her house at the time of Officer Owens' visit on Sunday. (R. 49) She stated that she had read most of this particular issue of *Consolation* (R. 49) and that what she read did not make her feel any less love for her country or for the flag or did it tend to make her "against the Government". Furthermore she agreed that nothing said or done by appellant caused her to "dislike the white people". (R. 47, 48, 51) Police Chief Owens also stated that at the request of the prosecuting

attorney he had read this issue of the *Consolation* magazine and that when he finished he said he felt more respect for the Flag than before, and that he was unable to point out any item other than the two referred to by the prosecuting attorney that was improper or wrong. R. 39, 44.

Both appellant and Mrs. Babin explained that since *Consolation* was a news magazine publishing many news items taken from the public press, they did not necessarily believe or teach everything that appeared in the magazine, but passed it on to the people for what it was worth. R. 84-85, 90.

The State introduced into the evidence two excerpts from *Consolation* No. 583, issue of January 21, 1942, which excerpts were mentioned in the indictment. The first of the allegedly objectionable writings is on pages 9 and 10 of the magazine, and appears in the record at pages 35-37 inclusive. This article in its entirety is reprinted from an editorial appearing in the Lewiston (Maine) *Daily Sun*, and so states at the end of the article. R. 43.

The second article complained of in the indictment is on page 24 of the *Consolation* and appears in the record at page 37. The article is based on a news dispatch from Monte Carlo (Monaco), and contains seven lines of editorial comment besides the actual dispatch.

***Grounds and Decisions Sustaining Jurisdiction  
and Showing that Substantial Federal Questions  
are Involved***

**FIRST**

**The courts below should have held that Section 1 of the statute is void on its face because by its terms it unduly abridges the freedom of speech and of the press, contrary to the First and Fourteenth Amendments to the United States Constitution.**

***Decisions Cited***

**Stromberg v. California, 283 U. S. 359**

**Herndon v. Lowry, 301 U. S. 242**

**Near v. Minnesota, 283 U. S. 697**

**Bridges v. California, 314 U. S. 252**

**Thornhill v. Alabama, 310 U. S. 88**

**Carlson v. California, 310 U. S. 106**

**Schneider v. State, 308 U. S. 147**

**De Jonge v. Oregon, 299 U. S. 353**

**Schenck v. United States, 249 U. S. 47**

**Fiske v. Kansas, 274 U. S. 380**

**State v. Klapprott, 127 N. J. L. 395, 22 A. 2d 877**



## SECOND

**The courts below should have held that Section 1 of the statute is unconstitutional as construed and applied to the facts and circumstances of this case because appellant's rights of freedom of speech, press and worship have been abridged contrary to the first and fourteenth amendments to the United States Constitution.**

### *Decisions Cited*

Cantwell v. Connecticut 310 U. S. 296

Schneider v. State 308 U. S. 147

Lovell v. Griffin 306 U. S. 444

Oney v. Oklahoma City 120 F. 2d 861

Lynch v. Muskogee 47 F. Supp. 589

Beeler v. Smith 40 F. Supp. 139

Stromberg v. California 283 U. S. 359

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De Jonge v. Oregon 299 U. S. 353

Schenck v. United States 249 U. S. 47

Fiske v. Kansas 274 U. S. 380

Near v. Minnesota 283 U. S. 697

### THIRD

The courts below should have held that the statute is unconstitutional as construed and applied because it does not require that there be a showing of a clear, immediate and present danger that disloyalty to the government or an attitude of stubborn refusal to salute, honor or respect the flag or government or any of the other evils that statute is designed to prevent will result, but allows a conviction if the court or jury believes there is a *tendency* to cause such at any time in the future.

#### *Decisions Cited*

Schenck v. United States 249 U. S. 47

Bridges v. California 314 U. S. 252

Stromberg v. California 283 U. S. 359

Thornhill v. Alabama 310 U. S. 88

De Jonge v. Oregon 299 U. S. 353

Whitney v. California 274 U. S. 357, 363-369

Herndon v. Lowry 301 U. S. 697

## FOURTH

There is no evidence whatever that any of the evils prohibited by the statute, to wit, disloyalty to the government or attitude of stubborn refusal to salute the flag or advocacy of the cause of the enemies will result from the words spoken by appellant or the literature distributed by her.

### *Decisions Cited*

Herndon v. Lowry 301 U. S. 697  
 McKee et al v. Indiana 37 N. E. 2d 940, — Ind. —  
 People v. Northum 41 C. A. 2d 284, 103 Cal. Supp. 295  
 Butash v. State 212 Ind. 492, — N. E. 2d —  
 Fiske v. Kansas 274 U. S. 380  
 Beeler v. Smith 40 F. Supp. 139  
 State v. Sentner — Iowa —, 298 N. W. 813  
 State v. Aspelin — Oreg. —, 203 P. 964

## FIFTH

The convictions cannot be based upon isolated statements, oral or written, but the court must examine the entire conversations and the contents of the literature from which such statements are taken to determine the intent and meaning of the language objected to.

### *Decisions Cited*

Schaefer v. United States 251 U. S. 466, 482  
 United States v. One Book Ulysses 72 F. 2d 705  
 United States v. Dennett 39 F. 2d 564  
 Halsey v. New York Society 234 N. Y. 1, 4.  
 Klaw v. New York Press Co. 137 A. D. 466, 688  
 Daniel v. Moncure 58 Mont. 193, 200

## SIXTH

**The general verdict will not support a conviction where the undisputed evidence shows that either ground of conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.**

### *Decisions Cited*

*Stromberg v. California* 283 U. S. 359, 363-366

*Williams v. State of North Carolina* 63 S. Ct. 207, 210

*Thornhill v. Alabama* 310 U. S. 88

## SEVENTH

**On its face and as construed and applied the statute is unconstitutional because it is vague, indefinite, uncertain, too general, fails to furnish ascertainable standard of guilt, enables speculation and amounts to a dragnet thereby permitting the denial of liberty contrary to section 1 of the Fourteenth Amendment to the United States Constitution.**

### *Decisions Cited*

*Thornhill v. Alabama* 310 U. S. 88, 97-98

*Lanzetta v. State* 306 U. S. 451

*Herndon v. Lowry* 301 U. S. 242

*Connolly v. General Const. Co.* 269 U. S. 391, 392

*United States v. Cohen Grocery Co.* 255 U. S. 81

*International Harvester Co. v. Kentucky* 234 U. S. 216

*Standard v. Waugh Chemical* 231 N. Y. 51

## EIGHTH

The existence of state of war in which the nation is engaged does not limit, suspend or shorten the Bill of Rights or the Fourteenth Amendment but does permit broadening of legislative powers which must find support in direct and specific needs of the fields to which extended and the terms of the statute do not directly pertain to any such needs.

### *Decisions Cited*

Laski, *Liberty in the Modern State*

pp. 56-57, 115, 123, 124-125

Wilson v. Russell 1 So. 2d 569, 146 Fla. 539

Ex parte Milligan 4 Wall. 2, 18 L. Ed. 281, 295

Milk Wagon Drivers Union v. Meadowmoor Dairies

312 U. S. 287, 320

United States v. Carolene Products

304 U. S. 144, 152-153

### **Discussion**

The discussion of the constitutional attack upon this statute as construed and applied to the activity of appellant complained of in the indictment, has been fully presented in the *Statement as to Jurisdiction* filed in the companion case of *Taylor v. State*, pages 23 to 30, and by specific reference thereto we incorporate that argument herein as if it were printed at length at this point. Furthermore, we have included as an appendix, the learned dissenting

opinions filed in this case, which further clarify the constitutional issues involved. See also the dissenting opinions filed in the companion cases of *Taylor v. State* and *Cummings v. State*, which are included in the respective jurisdictional statements in those cases as appendices.

## CONCLUSION

For the sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial questions were presented before the Supreme Court of Mississippi.

The Appellee, State of Mississippi, acting through its counsel of record, has stipulated with appellant to waive the filing of any papers in opposition to the jurisdiction of this court, and reserve the right to urge that no "substantial federal question" be presented in brief and upon oral argument. A copy of such stipulation is attached hereto and marked Appendix B. See page 30.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the judicial procedure as to call for this Court's power of supervision to halt the same.

Respectfully and confidently,

HAYDEN C. COVINGTON

117 Adams St., Brooklyn, N. Y.

*Attorney for Appellant*

**APPENDIX A****Opinions****IN THE SUPREME COURT OF MISSISSIPPI****IN BANC:****No. 35163****(Opinion rendered January 25, 1943)****BETTY BENOIT v. STATE OF MISSISSIPPI  
GRIFFITH, J.**

In this case the proof on behalf of the State is in our opinion sufficient to sustain the verdict of conviction and establishes that a companion of the appellant, who was jointly indicted with her, actually distributed and delivered to one of the state witnesses and in the presence of the appellant the particular pamphlet of literature mentioned in the indictment and entitled "Consolation", as a "Journal of Fact," and that both the appellant and her companion admitted to an officer, a witness for the state, that they were distributing this literature. This so-called "Journal of Fact" contained, among other articles, an editorial from the Lewiston Daily Sun which charged, among other things, that "what that flag salute amounts to is a contemptible, primitive worship", and also that saluting the flag is a "pitiful mockery of education." The pamphlet also contains other language undertaking to create prejudice against and disloyalty to, the American flag among Protestant people by charging that the salute to the flag "originated in the Catholic schools of France", and that saluting in the United States "has covertly been pushed by the Catholic Hierarchy here."

We are of the opinion that what the appellant was found guilty by the jury of doing was in violation of Chapter 178, General Laws of Mississippi 1942, and that this case is governed by the controlling opinion in *R. E. TAYLOR v. State*, No. 35,143, and by both the main and concurring opinions in the case of *Clem Cummings v. State*, No. 35,143, this day decided.

**AFFIRMED.**



(Opinion rendered January 25, 1943)

IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:  
No. 35,163

BETTY BENOIT *v.* STATE

SMITH, C. J., dissenting.

It will be necessary for me to state this case in order that one not familiar with the record may know to what questions this opinion is addressed. This indictment charged the appellant with violating that provision of Chapter 178, Laws of 1942, which prohibits oral, written, printed or phonographic preaching or teaching "which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States or the State of Mississippi". The overt act charged in the indictment and to which the State directed its evidence is the

IN THE SUPREME COURT OF MISSISSIPPI  
distribution by the appellant of a certain publication or journal entitled "Consolation" a Journal of Fact, Hope and Courage", which contained an article under the caption "Public Opinion in Maine", which will be set forth in a footnote hereto.\*

The appellant is a member of an organization known as Jehovah's Witnesses, the members of which are spreading their conception of the Gospel from person to person and house to house. The journal referred to in the indictment is published monthly by the Watchtower Bible and Tract

\* "The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute the American flag would have been nearer right, nearer sound, if the Court had simply said that it is a matter of State Jurisdiction.

"But see what a pitiful mockery of education that salute to the flag is!

"There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute rule amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

"It is probable that not half a dozen members of any State Legislature

Society, Inc., of New York City, a Jehovah's Witness institution, and is distributed by the appellant in the course of the work in which she is engaged. The State's evidence discloses or rather the jury was warranted in finding therefrom, that the appellant went to the residence of Annie Felix and gave her a copy of the issue of this Journal containing the article set forth in the indictment. The record does not disclose that the appellant believes that to salute the flag violates God's Word, or that she so taught, conse-

*[Continued from preceding page]*

can give an adequate definition of what the flag stands for.

"Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside America.

"Try another definition. Perhaps this definition is not so good now as it was ten years ago, but say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

"As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

"But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts to is a required worship by the children that don't know what they are worshipping. They never will learn by that kind of tyranny.

"See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the land, the great principles of the common law that the fathers brought over with them when they came from England.

"To help the children to understand what is the law of the land, what are the rights of an American citizen, to understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

"To help the children to understand the duties of government; and how those duties are divided to the city, the State government, the Federal Government.

"It is good that the Supreme Court of the United States is not going over the country to tell the States what they can do about the flag.—Lewiston Daily Sun." Which said publication or journal also contained an article under the caption "French Catholics Start Flag Salute", in the following words, to wit:

"A dispatch from Monte Carlo says, 'The salute to the flag ceremony, now a daily event in all French schools, originated in the Catholic schools of France.' The type of mind that finds satisfaction in worshipping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here."

quently no question of religious liberty is here presented. The salute of flag provision of this statute may violate, on its face, the constitutional guaranties of freedom of speech and of the press, but it is subject to the criticism that a sufficiently ascertainable standard of guilt can not be found in the words "honor or respect the flag or government of the United States or of the State of Mississippi", *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066, and for that reason should be held to be invalid.

The question presented on the merits of the case is: Is the article, set forth in the indictment and appearing in the issue of the Journal, entitled "Consolation," etc. given by the appellant to Annie Felix within the condemnation of the statute? This article is not addressed to voluntary saluting of the flag, but is simply a vigorous protest, giving reasons therefor, against statutes and school by-laws requiring public school children to salute the flag, and against a decision of the Supreme Court of the United States upholding such a requirement. This the statute does not and could not constitutionally forbid, for full and free public discussion of such matters is well within the constitutional guaranty of freedom of speech and of the press. *Sullens v. State*, 191 Miss. 856, 4 So. 2d. 356. These guaranties are not only for the protection of individual but are also for the protection of the public in its right, fundamental in a democracy, to have the benefit of full and free discussion of governmental policies and of the conduct of government officials, cite authority for which would be supererogatory. The appellant's request for a directed verdict of not guilty should have been granted.

Alexander and Anderson, JJ., concur in this opinion.

IN THE SUPREME COURT OF MISSISSIPPI  
IN BANC:  
No. 36163

(Opinion rendered January 25, 1943)

BETTY BENOIT *v.* THE STATE

ALEXANDER, J., dissenting.

It seems to me that the momentum engendered by the views expressed in the controlling opinions in the companion cases (*Taylor v. State* and *Cummings v. State*, decided this day) should have been checked before encompassing the appellant here.

From the pamphlet "Consolation", made the basis of a fear of revolution or sedition, it may be safely assumed that the State has culled its most potent paragraphs. These selections are set forth in the indictment and quoted in other opinions herein. In comparing these vaporings with the daily utterances of our metropolitan press and of men in high places, it becomes difficult to reconcile the internment of the one and applause of the other with an equal protection of the law.

In this connection, attention is called to the fact that part of the language charged to be subversive is quoted from the press, the *Lewisburg Daily Sun*. No pains have been taken to disclose whether this widely distributed publication has felt the heavy hand of judicial restraint. It serves to emphasize that to invest oneself with an aura of sophistication is a guaranty of immunity. The ill-advised designation of this prohibition of the compulsory salute by pupils in schools as a "pitiful mockery of education" is hardly less positive and much less authoritative than the expression of the Court in *Barnette v. Board of Education* (decided Oct. 6, 1942 by a three-judge federal court) that its compulsion against conscience "is a petty tyranny unworthy of the spirit of this Republic."

In addition to comments in the dissenting opinion in

Cummings v. State (decided this day) as to the effect of the war emergency, I take occasion to quote the following pertinent and persuasive paragraphs:

"In a time of crisis, particularly, when the things we hold most dear are threatened, we shall find the desire to throw overboard the habits of tolerance, almost irresistible." . . . "I can think of no revolutionary period in history when a government has gained by stifling the opinion of men who did not see eye to eye with it; and I suggest that the revolutionary insistence that persuasion is futile finds little creative evidence in its support." . . . "It is evident from our experience that to limit the expression of opinion in wartime to opinion which does not hinder its prosecution is, in fact, to give the executive an entirely free hand, whatever its policy, and to assume that, while the armies are in the field, an absolute moral moratorium is imperative. That is, surely, a quite impossible position. No one who has watched at all carefully the process of governance in time of war can doubt that criticism was never more necessary. Its limitation is, in fact, an assurance that the unity of outlook is a guarantee that mistakes will be made and wrong done. For once the right to criticise is withdrawn, the executive commits all the natural follies of dictatorship." . . . "Freedom of speech, therefore, in wartime seems to me broadly to involve the same rights as freedom of speech in peace. It involves them, indeed, more fully because a period of national trial is one when, above all, it is the duty of citizens to hear their witness." Laski, *Liberty in the Modern State*, pp. 56-57, 115, 123, 124-125.

Our solicitude should include the danger that in repressing fundamental rights we may lose the war upon our own home front. The conduct of the war is, of course, directed toward its success; but success means not only winning the fight but not losing our freedom.

I realize the difficulty of restricting the bases for decision to the particular case disclosed by the record before us,

as well as the self-control necessary to exclude personal predilections from judgments which should be justified solely by the applicable law. To do otherwise is to destroy the defendant with the very sword with which she had sought to protect her rights. "A judge would err if he were to impose upon the community as a rule of life his own idiosyncrasies of conduct or belief." Cardozo, *The Nature of the Judicial Process*, p. 108.

The absence of a definite legal yardstick by which to measure appellant's 'disloyalty' is as important here as in the other cases mentioned. At the expense of repetition, the opinions voiced must bear fruitage in conduct and such conduct must threaten a clear and present danger, and such danger must be that the functions of the government will be overthrown by force or violence or that mutiny or insubordination be engendered in our armed forces. "A man may have as bad a heart as he chooses, if his conduct is within the rules. In other words, the standards of the law are external standards, and, however much it may take moral considerations into account, it does so only for the purpose of drawing a line between such bodily motions and rests as it permits, and such as it does not. What the law really forbids, and the only things it forbids, is the act on the wrong side of the line, be that act blameworthy or otherwise. Again, any legal standard must, in theory, be one which would apply to all men, not specially excepted, under the same circumstances. It is not intended that the public force should fall upon an individual accidentally, or at the whim of any body of men. The standard, that is, must be fixed." . . . "Finally, any legal standard must, in theory, be capable of being known. When a man has to pay damages, he is supposed to have broken the law, and he is further supposed to have known what the law was." Holmes' *Common Law*, at p. 110-111.

The Chief Justice and Judge Anderson concur in this opinion.

## APPENDIX B

### Stipulation

#### IN THE SUPREME COURT OF MISSISSIPPI

R. E. TAYLOR, Appellant, v. STATE OF MISSISSIPPI	}	No. 35143
CLEM CUMMINGS, Appellant, v. STATE OF MISSISSIPPI	}	No. 35155
BETTY BENOIT, Appellant, v. STATE OF MISSISSIPPI	}	No. 35163

Now come Appellants, R. E. Taylor, Clem Cummings, and Betty Benoit, by and through their attorney, Hayden C. Covington, and the Appellee, The State of Mississippi, through its attorney, George H. Ethridge, Assistant Attorney General, and stipulate as follows:

In order that these appeals may be submitted to the United States Supreme Court on the merits at the present term, it is agreed that the appellee, The State of Mississippi, waives its right to file a statement disclosing any matter or ground making against the jurisdiction of the United States Supreme Court asserted by the appellants in their jurisdictional statements and reserves the question of whether or not the cases should be dismissed for "want of substantial Federal question" for consideration of the Federal questions presented on a hearing of these causes on the merits and oral argument thereof before the United States Supreme Court.

Dated: February 23, 1943.

Hayden C. Covington  
Attorney for Appellants

George H. Ethridge  
Attorney for Appellee



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**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM 1942

**No. 827**

■

BETTY BENOIT, *Appellant*

*v.*

THE STATE OF MISSISSIPPI, *Appellee*

■

APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

**APPELLANT'S BRIEF**

**[FREEDOM OF PRESS]**

HAYDEN C. COVINGTON  
*Attorney for Appellant*

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 827



BETTY BENOIT, *Appellant*

*v.*

THE STATE OF MISSISSIPPI, *Appellee*



APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

## APPELLANT'S BRIEF

### Opinion Below

The opinion of the Supreme Court of Mississippi is reported in 194 Miss. . . ., and in 11 So. 2d 689. It appears also in the record at pages 119 to 125.

### Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statutes could be received as a matter of right on writ of error.

## **Timeliness**

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 126) The petition for appeal and other papers required by the rules of this court are filed within three months from the date of such judgment. R. 127-140.

## **The Statute**

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

### **HOUSE BILL No. 689**

**AN ACT** to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.

**WHEREAS**, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and

**WHEREAS**, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and

**WHEREAS**, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative depart-

ment of the state of Mississippi and of these United States shall enact all laws and do all things necessary to insure domestic tranquility and promote the common defense and general welfare of the people thereof; and

WHEREAS, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state of Mississippi are a menace to the safety of this State and these United States.

NOW, THEREFORE,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Sec. 2. Any person in possession of maps or parts

of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, transportation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the intention of such persons to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding \$1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the

courts, such decision shall not be construed so as to render invalid the remainder of this act.

Sec. 7. That this act shall take effect and be in force from and after its passage.

Approved March 20, 1942.

The Circuit Court which is the trial court and the appellate court, the Supreme Court of Mississippi, held the statute was not unconstitutional and that it was not superseded by federal statutes on the same subject. Such courts refused to hold that the statute on its face and as construed and applied to the facts abridged the rights of freedom to worship Almighty God, freedom of conscience, of press and speech contrary to the 1st and 14th Amendments to the United States Constitution. Said courts also held that the statute was not vague, indefinite, too general and a dragnet as construed and applied.

### **The Indictment**

THE STATE OF MISSISSIPPI, COUNTY OF MARION  
CIRCUIT COURT, JUNE TERM 1942.

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of said county, elected, empaneled, sworn and charged to inquire in and for the county aforesaid, at the term aforesaid, of the court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present, that

MRS. VIOLET BABIN  
AND  
MISS BETTY BENOIT

in said county, on or about the . . . day of June, 1942, acting together and in conjunction with each other, as in-

dividuals and as members of a certain organization or sect commonly known as Jehovah's Witnesses, did then and there wilfully, unlawfully, feloniously, knowingly and intentionally disseminate and distribute certain literature and printed matter designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America, to wit, a certain publication or journal, entitled "Consolation, a Journal of Fact, Hope and Courage", being Vol. XXIII No. 583 of said publication, dated January 21, 1942, published by Watchtower Bible and Tract Society, Inc., which said publication or journal was printed in the English language and contained an article under the caption "Public Opinion in Maine" in the following words, to wit:

"The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute the American flag would have been nearer right, nearer sound, if the Court had simply said that that is a matter of State jurisdiction.

"But see what a pitiful mockery of education that salute to the flag is!

"There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

"It is probable that not half a dozen members of any State Legislature can give an adequate definition of what the flag stands for.

"Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside of America.

"Try another definition. Perhaps this definition is not

so good now as it was ten years ago, but say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

"As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

"But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts to is a required worship, worship by the children that don't know what they are worshipping. They never will learn by that kind of tyranny.

"See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the land, the great principles of the common law that the fathers brought over with them when they came from England.

"To help the children to understand what is the law of the land, what are the rights of an American citizen, to understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

"To help the children to understand the duties of government; and how those duties are divided to the city, the State Government, the Federal Government.

"It is good that the Supreme Court of the United States is not going over the country to tell the States that they can do about the flag.—Lewiston Daily Sun."

and which said publication or journal also contained an article under the caption "French Catholics Start Flag Salute", in the following words, to wit:



"A dispatch from Monte Carlo says, 'The salute to the flag ceremony, now a daily event in all French schools, originated in the Catholic schools of France.' The type of mind that finds satisfaction in worshipping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here."

and which said publication or journal also contained other articles of similar nature, import and purpose, all of which were then and there designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States, in violation of the statutes in such case made and provided and against the peace and dignity of the State of Mississippi.

**BERNARD CALLENDER**  
County Prosecuting Attorney

### **Statement**

Appellant came to Columbia, Mississippi, with her companion, Mrs. Violet Babin, on April 7, 1942, for the purpose of preaching the gospel of God's kingdom to the people of that community. (R. 76, 90) As ministers sent forth by the Watchtower Bible and Tract Society of Brooklyn, New York, they carried on their evangelistic work by calling from house to house and visiting the people in their homes, there presenting to them the various publications of this Society and encouraging those of good-will to read and study same. (R. 93, 96) This was the same work that appellant and her companion had carried on in their native state of Louisiana for the two years just previous. R. 80.

Among the publications thus distributed by appellant,

was *Consolation—A Journal of Fact, Hope and Courage*, which is published every other Wednesday and distributed nation-wide, being entered in the mails as second-class matter under regulations prescribed by Congress. (R. 69, 93-94) This journal is published by the Watchtower Bible and Tract Society for the special benefit of Jehovah's witnesses, as well as for distribution among the general public. R. 55-67, 84.

The entire magazine was introduced in evidence and the original exhibit furnished this court. Examination of its contents shows it to be essentially a news magazine with editorial comment stressing the relationship of current world events to Bible prophecy. It seeks to untangle the maze of news that daily crowds the public press of the nation, and to present the more significant items to its readers in a clear, understandable manner. It does not feature war-news, but rather covers other matters of general public concern. Its columns are not subject to censorship. It carries no commercial advertising. Printed in twelve languages, its principal purpose is to enlighten and inform its readers on matters vital to their welfare. Its constant purpose is to get at facts and bring into public view everything that tends to obscure the important issues. Founded in 1919 as *The Golden Age*, more than six and one-half million copies were printed in 1942.

The magazine contains items of general interest, such as reprints and quotations from various newspapers and magazines both secular and religious (R. 43), historical treatises (R. 55-59), letters and reports from Jehovah's witnesses (R. 59-60; 64-67), news items (R. 68, 90), Biblical discourses (R. 69), interesting facts (R. 69), judicial proceedings, and matters touching upon labor, economics, social science, education, commerce, transportation, political science domestic and foreign, agriculture, science, invention, health, home, travel, religion, philosophy, and many others. *Consolation* No. 583, Volume XXIII, issue of Jan-

uary 21, 1942, the one mentioned in the indictment, listed the titles of the articles appearing in the issue of the magazine as follows: "ACTS OF THE THEOCRACY IN NEW ENGLAND, Roger Williams, Jehovah's witness.—THE FORGOTTEN GOD, The Penalty of the Nations for Forgetting.—JESUIT CUNNING UTILIZES COMMUNISM.—INSTINCT AND REASONING IN BIRDS." R. 69.

The Chief of Police of the Town of Columbia, Mr. Bill Owens, testified that he had received many complaints from the people in the town regarding the activity of appellant and Mrs. Babin. The leading business men and officials had advised him that the literature being distributed by appellant was against the government and tended to cause disloyalty among the people. (R. 41) On April 12, 1942, five days subsequent to appellant's arrival at Columbia, it was reported to Mr. Owens that a Bible study was to be held at the home of Annie Felix, a negro resident of the town, whereupon Mr. Owens went to investigate. R. 33, 46.

Upon his first arrival at the house, he found only Annie Felix at home, but when he came back a short time later, he saw appellant and Mrs. Babin in the house, and he walked into the room and demanded to know what they were doing there. Mrs. Babin handed him her "testimony card" which briefly explained the mission of Jehovah's witnesses. Beyond that it does not appear that either the appellant, Mrs. Babin, or Annie Felix made any remark to him during his visit. R. 79, 92.

The reason given for appellant's presence at Annie Felix's home on the day in question was that appellant and her companion had come to conduct a Bible study with the aid of the *Watchtower* magazine and the Bible. At the time the officer burst into the room, each had a Bible and was preparing for the study. R. 78, 90.

Mr. Owens appeared to be greatly incensed. He stated that he told Annie Felix that he was going to "get rid" of "that stuff" for her; that he "told her [Annie Felix] and

this woman a good bit there that afternoon"; and that he wasn't sure whether or not he had threatened Annie Felix that "she had better not be found there with any more of that stuff in her home". R. 40.

Mrs. Babin testified: "He told us that he didn't want us in Town and we would have to leave and that he spoke not only for himself but for the people of the City; and he said only over his dead body would we do this work here. He then grabbed the literature and the phonograph and the lecture and threw it out and broke it and set fire to it." (R. 76) Mrs. Babin went on: "It was a phonograph and a 14- or 15-piece lecture, which was 14 or 15 records of Bible Lectures, and he took the literature from the table of Annie Felix and carried it outside and burned it. He broke the phonograph and the 14 or 15 records." (R. 78) The appellant said: "He just marched in and begun to rave and he madly picked up everything within his reach that looked like literature and carried it outside and destroyed it. He didn't ask me anything and I didn't answer him anything." (R. 92) Mr. Owens stated that he saw many *Consolation* magazines at the home of Annie Felix, and he picked up all that he saw, burning same except for the issue of January 21, 1942 (No. 583), which he kept. R. 34.

It is not clear just how the magazine came to be in Annie Felix's house. Annie Felix testified that the above event took place in her home on Sunday and that on the previous Thursday Mrs. Babin in the company of appellant had called at her home and left several magazines with her, including the one here in question. (R. 47) The witness stated that Mrs. Babin was the one that had handed her these magazines. (R. 50) Yet upon direct examination for the defendant, Annie Felix said that appellant had never given her any literature of any kind and that Mrs. Babin had given her only one booklet which she identified as *Hope* and which was entered into the evidence as Defendant's Exhibit A-1. (R. 86) Moreover, Mr. W. T. Hornsby, another

of Jehovah's witnesses, stated that he had mailed several issues of the *Consolation* magazine to Annie Felix during the winter, but that he was not sure that the issue of January 21, 1942, was included in those he sent. (R. 73) Appellant and Mrs. Babin repeatedly denied having left any magazines or any other literature, with exception of the booklet *Hope*, at the house of Annie Felix at any time. (R. 88, 77, 79, 85, 91, 101) The reason given was because Annie Felix "had all the literature" except the *Hope* booklet which Mrs. Babin says she left. R. 77.

Annie Felix identified the *Consolation* No. 583 which had been entered in the evidence as one of several Watchtower publications that were lying on the table in her house at the time of Officer Owens' visit on Sunday. (R. 49) She stated that she had read most of this particular issue of *Consolation* (R. 49) and that what she read did not make her feel less love for her country or for the flag, nor did it tend to make her "against the Government". Furthermore she agreed that nothing said or done by appellant caused her to "dislike the white people". (R. 47, 48, 51) Police Chief Owens also stated that at the request of the prosecuting attorney he had read this issue of the *Consolation* magazine and that when he finished he said he felt more respect for the flag than before, and that he was unable to point out any item other than the two referred to by the prosecuting attorney that was improper or wrong. R. 39, 44.

Both appellant and Mrs. Babin explained that since *Consolation* was a news magazine publishing many news items taken from the public press, they did not necessarily believe or teach everything that appeared in the magazine, but passed it on to the people for what it was worth. R. 84-85, 90.

The State introduced into the evidence two excerpts from *Consolation* No. 583, issue of January 21, 1942, which excerpts were mentioned in the indictment. The first of the allegedly objectionable writings is on pages 9 and 10 of the magazine, and appears in the record at pages 35-37 inclu-

sive. This article in its entirety is reprinted from an editorial appearing in the Lewiston (Maine) *Daily Sun*, and so states at the end of the article. R. 43.

The second article complained of in the indictment is on page 24 of the *Consolation* and appears in the record at page 37. The article is based on a news dispatch from Monte Carlo (Monaco), and contains seven lines of editorial comment besides the actual dispatch.

## **History of Proceedings and Federal Questions Raised Below**

### CIRCUIT COURT PROCEEDINGS

A motion for severance was first granted by the court, and the following proceedings therefore were had on the separate trial of Betty Benoit. R. 5-6.

Appellant filed and urged a motion to quash the indictment (R. 12-15), which was overruled and exception allowed. (R. 15) A demurrer to the indictment was duly filed and urged (R. 8-11), which was overruled and exception allowed. R. 11-12.

Appellant pleaded "not guilty". R. 32.

At close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 16-18), which was overruled and exception allowed. At the close of the entire case and when both parties had rested their case appellant duly filed a motion for directed verdict requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 102), which was overruled and exception allowed. R. 102.

Under grounds 1 and 2 of the motion to quash (R. 12-13) the demurrer (R. 8), the motion for peremptory instruction (R. 16), and the motion for directed verdict (R. 102, 112-117), appellant attacked the statute on the grounds that



on its face, by its terms, and as construed and applied it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the first and fourteenth amendments to the United States Constitution. R. 12-13, 8, 16, 102, 112-117.

Under grounds 4 and 5 of the motion to quash (R. 13-14), demurrer (R. 9), motion for peremptory instruction (R. 17), and motion for directed verdict (R. 102, 112-117), appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated section 1 of the Fourteenth Amendment to the United States Constitution. R. 9, 13-14, 17, 102, 112-117.

#### MISSISSIPPI SUPREME COURT PROCEEDINGS

In the Supreme Court of Mississippi under assignments of error numbers 1, 2, 3, and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 111-112) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and of worship, contrary to the 1st and 14th Amendments. (R. 115) Under ground 11 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the 14th Amendment. R. 115-116.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered and overruled the same. The court in effect held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press contrary to the federal constitution. The court in effect held that as con-



strued and applied that the rights of freedom of speech, and of press were not abridged contrary to the first and fourteenth amendment. The court in effect held that freedom of worship of Almighty God was not impaired by the conviction and judgment. R. 119.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of the validity of the same.

### **Specification of Errors to be Urged**

(1) The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Supreme Court of Mississippi erred in failing to hold that, as construed and applied to the particular facts and circumstances of the case, the statute in question is unconstitutional because, as so construed and applied, it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech, contrary to the First and Fourteenth Amendments to the United States Constituion.

(3) The Supreme Court of Mississippi erred in failing to hold that, on its face and as construed and applied, the statute violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Consti-

tution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellant of liberty without equal protection and due process of law.

(4) The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

(5) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

(6) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

(7) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the state's evidence.

(8) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court

should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

## ARGUMENT

### ONE

**The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.**

The appellant came to Columbia, Mississippi, for the sole purpose of there preaching the gospel of God's kingdom to the people. To do this she used the printed page, recorded phonograph discourses, and *verbal testimony*. The statement of facts herein serves to demonstrate how at the time complained of in the indictment, she was engaged in exercising this fundamental right in a most proper manner, viz., conducting a study of God's Word, the Bible, with one who had expressed her desire to have an understanding of the Great Creator's purposes. The terms of the statute form a *prima facie* burden on the right of free speech; and as construed and applied to the circumstances of this case by the courts below, it becomes manifest that appellant's right to speak freely within proper bounds has been infringed and denied by the statute.

This matter we have discussed fully under Point ONE of the brief filed in the case of *Taylor v. The State of Mississippi*, pages 23 to 77. For convenience of the court, that entire argument we incorporate herein by reference and make it a part of this brief just as though it were printed at length herein.

## TWO

**The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.**

The most fundamental and delicate of all human rights is the freedom of the individual to worship God according to the dictates of his own conscience. As one of Jehovah's witnesses sent forth to tell the people of and concerning God's kingdom, appellant was serving her Creator in the way she considered proper and reasonable. She had come to the town of Columbia to bring the people the life-giving message of God's Word—which to her was the only proper way of worshiping her Creator "in spirit and in truth". When found in the home of Annie Felix at the time complained of, the appellant was engaged in this very pursuit.

As construed and applied to these circumstances by the highest court of Mississippi, her action was made a crime and she stood committed to the penitentiary. That this is a direct denial of the freedom of worship is almost too plain to require argument. We have presented a full discussion of this matter under Point TWO in the brief filed in the case of *Cummings v. The State of Mississippi*. For convenience of the court, that entire argument we incorporate herein by reference and make it a part of this brief just as though it were printed at length herein.

### THREE

**The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.**

#### A

**The broadest possible latitude in criticism and comment on world events, national affairs, state and national governments and public officials, was intended by the framers of the First Amendment to be guaranteed to the press, in times of war as well as in times of peace.**

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Thirty-nine delegates from thirteen war-weary states listened to the reading of those solemn words and then affixed their signatures to the document.<sup>1</sup> To those delegates at the historic Convention of 1787 at Philadelphia these words were not merely an eloquent introduction to an important instrument of their creation. These words embodied the objectives, aspirations, and convictions earned by the blood and toil of a people who envisioned freedom and *determined* to have it. Fresh in their minds were the bitter experiences they and their fathers had endured under the spiked-heel of tyrants in the old European world. Deep wounds inflicted by the despotism of authoritarian government had not yet healed over, and, now that their battle cry of 'liberty' had become a reality, they resolved to insure the fruit of their efforts both to themselves *and to their poster-*

<sup>1</sup> *The Constitution of the United States of America* (Annotated), Senate Document No. 232, 74th Congress, Second Session, page 13.

ity by forming a government that would protect and respect these rights they deemed "inherent".

Their first attempt, the "Articles of Confederation", had proved to be weak and insufficient and they had therefore assembled themselves together in this convention to examine the defects in the existing system of their government and formulate "a plan for supplying such defects as may be discovered".<sup>2</sup> After much discussion and debate by some of the greatest figures in American history, they finally brought forth to a skeptical world the completed proposed "Constitution". When the Continental Congress passed a resolution on September 13, 1788, putting the Constitution into operation<sup>3</sup> far-sighted statesmen realized that a milestone had been passed in the field of government. This new theory introduced a new sovereign in the realm of human authority: The PEOPLE became the fountain of all law and the government became their servant. The relative achievement of this "experiment" under the pressure of modern circumstances speaks for itself.

But the people, aware of their stated sovereignty, were not yet satisfied with arrangements. What positive assurance and protection did they have against usurpation of their newly declared freedom? What was there in this document that guaranteed to them their right to worship God according to the dictates of their individual conscience? Was there anything in this law that prohibited an overly ambitious Congress from abridging their right freely to speak, write and assemble? How could the people be sure that Congress would not resort to the oppressive tactics of the tyrant just overthrown and quarter soldiers in their homes against their consent—search their houses and take their persons without warrant? Was it true that at the whim of Congress a citizen might be thrown into jail without charge—held under excessive bail—forced to testify against

<sup>2</sup> *Text in Documents Illustrative of the Formation of the Union*, pp. 39-43.

<sup>3</sup> *The Constitution of the United States of America*, *op. cit.*, p. 13.

himself—face trial without counsel or the right to call witnesses or face his accusers? Did this new constitution surrender the erstwhile sovereignty of their state government to the new federal system? And finally, where in the constitution was it clearly and definitely stated that THE PEOPLE were to be the sovereign authority and the government to act only with delegated power?

Knowledge gained by bitter experience had taught these people to be cautious and suspicious. To them the rights of the individual citizen—the liberty of man—were the things they had been fighting and campaigning for. With the same spirit in which they had fought for liberty at Valley Forge, the people demanded that the constitution be done away with entirely or that a “bill of human rights” be added.<sup>4</sup>

As a result of their demands, Congress on September 25, 1789, finally proposed twelve amendments to the Constitution, and on December 15, 1791, the last State ratified ten of these amendments, and thus the *Bill of Rights*—the Bill of fundamental inherent human rights—became the law of the land with which all Americans today are familiar. With these provisions added, the constitution became more than a framework of a political system. It became the memorial perpetually dedicated to the protection and defense of freedom of Americans!

As the stars in the flag gradually increased to 48, only a very few amendments were found necessary to be added to the Constitution. It is here appropriate to mention only the Fourteenth Amendment which was adopted July 9, 1868, to secure the PEOPLE against abridgment of these same rights under state legislation.

<sup>4</sup>“On February 6, 1788, Massachusetts, by a narrow margin of 19 votes in a convention with a membership of 355, endorsed the new Constitution, but recommended that a bill of rights be added to protect the States from Federal encroachment on individual liberties. . . . New Hampshire became the ninth State to ratify, but like Massachusetts, she suggested a bill of rights. . . . New York ratified, with a recommendation that a bill of rights be appended.”—*The Constitution of the United States of America*, *op. cit.*, p. 14.



We know that the court is well aware of these facts and we recite them merely for the purpose of calling attention to the great moment of the question presented in this case. We submit that the institution known as Democracy is here at stake. We believe that a turning point in the history of our nation has been reached where the court must test the wisdom of the system of government envisioned by the founding fathers, against the greatest emergency ever faced by humanity.

The question to be determined by this court is the extent to which the broadened police power of the executive branch of government, acting under the necessities of total war, can be extended in derogation of the constitutional liberties of the individual. We do not say that an unalterable line of demarcation must be drawn between these factors, but we here submit that the application and construction of the statute has placed its operation in the forbidden area of "inalienable rights of man".

At this point we consider the application of the statute as it, as we contend, infringes the right of free press under the circumstances of this case. The arguments advanced under Points ONE and TWO in the briefs filed in the cases of *Taylor v. The State* and *Cummings v. The State* covering the treatment of freedom of speech and freedom of worship, are inseparably related to this discussion, and by specific reference we here incorporate under this point the particular arguments and principles therein advanced.

At the outset let it be recognized that the press of the nation is an item of the deepest national significance deserving the closest and most careful consideration that can be judicially given to a matter so fundamental to the national scheme.

Today it is a matter of common knowledge that the press is flourishing as never before in history. Recognizing the importance of feeding the press with important governmental news and information, Congress has authorized the establishment of the Office of War Information under the

Executive Office of the President. Special sections are reserved to the press in the galleries of Congress and all legislative assemblies nation-wide. Even this court has made special provision for the press that they may have easy and accurate access to the proceedings of this tribunal.

As a result of the gigantic network developed by the press, everyone in the entire nation is informed hour by hour of the events of the day. The nation is "on its toes", so to speak, ready for drastic changes and moves necessary under the stress of the times. If this were not so, distrust, fear and suspicion might instead prevail in the present circumstances.

The record conclusively shows that the publication here in question was in the nature of a news magazine, a part of the vast labyrinth of the press-communication. The specific articles challenged deal with current matters that are today featured, as they were at the time of the publication of the article, in the press of the nation. Since the state court has sustained the finding of the jury that the publication came within the prohibitory terms of the statute, we shall not, nor can we, do more than assail the validity of the statute itself as so construed and applied, under provisions of the First Amendment to the United States Constitution. The proposition is fundamental that the freedom of press guaranteed to be secure under the First Amendment against abridgment by the United States, is similarly secured to all persons by the Fourteenth against abridgment by a state.<sup>5</sup>

To do this, we must first determine what Congress intended when the First Amendment was passed. The historic background of the circumstances surrounding the adoption of the Bill of Rights is given in an enlightening article appearing in Thomas M. Cooley's *General Principles of Constitutional Law*, Third edition, 1898, pp. 299-301:

<sup>5</sup> *Schneider v. State*, 308 U. S. 147; *Grosjean v. American Press Co.*, 297 U. S. 233; *Whitney v. California*, 274 U. S. 357.

"Light may be thrown upon the intent by a consideration of the purposes which the enjoyment of the right subserves. The press is a public convenience which gathers up the intelligence of the day to lay before its readers, notifies coming events, gives warning against disasters, and in various ways contributes to the happiness, comfort, safety and protection of the people. But in a constitutional point of view, its chief importance is, that it enables the citizen to bring any person in authority, any public corporation or agency, or even the government in all its departments to the bar of public opinion, and to compel him or them to submit to an examination and criticism of conduct, measures, and purposes in the face of the world, with a view to the correction or prevention of evils; and also subject those who seek public positions to a like scrutiny for a like purpose. These advantages had been fully realized and enjoyed by the people during the revolutionary epoch; the press had been the chief means of disseminating free principles among the people, and in preparing the country to resist oppression: and its powers for good in this direction had appeared so great as to cast its other benefits into the shade. It is a just conclusion, therefore, that this freedom of public discussion was meant to be fully preserved; and that the prohibition of laws impairing it was aimed, not merely at a censorship of the press, but more particularly at any restrictive laws or administration of law, whereby such free and general discussion of public interests and affairs as had become customary in America should be so abridged as to deprive it of its advantages as an aid to the people in exercising intelligently their privileges as citizens, and in protecting their liberties."

This court has adopted substantially the same view as above announced. In *Bridges v. California*, 314 U. S. 252, 265-266, this court said:

"No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly, and petition than the people of Great Britain had ever enjoyed. . . . And since the same unequivocal language is used with respect to freedom of the press, it signifies a similar enlargement of that concept as well. Ratified as it was while the memory of many oppressive English restrictions on the enumerated liberties was still fresh, the First Amendment cannot reasonably be taken as approving prevalent English practices. On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society.

"The implications of subsequent American history confirm such a construction of the First Amendment. . . ."

Without citing further authority, it is seen that the free press was designed to play a specific role in the new democracy. It was provided as the means whereby the people could be kept informed on matters of government they had assumed to control. Thus they could keep a watchful eye on the representatives they had elected to public office, and intelligently exercise their right of voting such officials in or out of office.

Even a cursory examination of the matter reveals the importance assigned to the public press. Without a free press, *the people*, the sovereign authority in America, would grope about as helpless victims of propaganda, blindly following whatever power controlled the press, be it proper or improper power. A country thus led along in darkness, its eyes blindfolded by a black cloth of censorship, becomes the easy prey of tyrants. Other than by a free press how

can the people direct their Congress as to their wishes? Without free press we submit that DEMOCRACY cannot exist!

A distinction must at once be drawn between a *controlled press* and a *free press*. To be sure, the blighted peoples of Europe in the Nazi-Fascist-dominated lands have newspapers, magazines and other propaganda aplenty, and are encouraged to read the same. But every line of type that is produced for public consumption must first pass the eye of the Nazi censor, and unless it affirmatively expounds the Nazi creed, such publication is immediately suppressed, no doubt on the ground that it is "seditious". Can it be any wonder then that such people now groan and suffer under the heels of the Axis regime—servants and slaves to the unrelenting whip hand of the dictator? For the very reason that Americans have always enjoyed a *free press* as distinguished from a *controlled press* they are now able to shudder at the thought of such oppression dominating their lives. And in this hour of crisis in American history, its citizens can be glad that the founders of their country provided and protected a way for them to enjoy the institution of a free press. Had those founding fathers neglected to add the Bill of Rights to the Constitution, indeed the entire complexion of the present conflict might be different.

In *Stromberg v. California*, 283 U. S. 359, 369 (1931), which held invalid a California statute penalizing the display of a "red flag as a sign of opposition to organized government", the newly appointed Chief Justice held:

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a *fundamental principle of our constitutional system*."

And in *Near v. Minnesota*, 283 U. S. 697, 719-720 (1931), this court, in upsetting a State newspaper ban, squarely

rested its decision upon the public interest in free public discussion, saying:

"While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavoring faithfully to discharge official duties, exert a baleful influence and deserve the severest condemnation in public opinion, it cannot be said that this abuse is greater, and it is believed to be less than that which characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities."

This brings the discussion down to the heart of the matter. What role does a free press play in the conduct of the war? Is it subject to regulation of the legislature's enlarged police powers beyond reach of judicial interference? Or on the other hand, is it possible that a *free* press can exist right on through the emergency of war, enjoying the exercise of its normal peace-time privileges?

We submit that without a free press the war effort is crippled to the point of its complete collapse. We have just seen that the entire structure of government is based on the presumption of an informed intelligent citizenry, capable of discharging its duty as a sovereign power. Beyond refutation, the free press has been largely instrumental in bringing the country to its present position of power. The theory of the government has not been changed from that ordained by the framers of the Constitution. Now to knock from under the system one of the principal supporting

pillars is inviting the collapse of the entire structure.

It must be kept in mind that the Bill of Rights was adopted at a time in history when the country was still in a war state. By mustering all their strength and pushing with the might inspired by justice, they had just emerged from what may be truly termed an "all-out" war. It was on the basis of what they had learned in time of war that led them to adopt the form of government now enjoyed. Therefore, the First Amendment itself can be fairly termed as "war legislation" adopted at a time when the minds of the statesmen took into consideration the exigencies and necessities of war. Thus there is little strength to the argument that liberty of the press must be entirely subordinated to the will of the government in time of war. We submit that during a time of stress it becomes more necessary than ever before for the press to guide the people to the TRUTH of matters, that they may intelligently wield the fist of armed might against their enemy.

But how may the press convey the TRUTH to the people? Thomas Jefferson, often referred to as the "Father of Democracy", caused to be enacted into the statutes of Virginia one of the most noble laws ever written, and therein the answer is given:

" . . . that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere, when principles break out into overt acts against peace and good order; and finally, that *truth is great and will prevail, if left to herself; that she is the proper and*



*sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.*" [Italics added]—Virginia Statute for Religious Freedom.

What is there said of religious freedom applies with equal force to freedom of the press, if an arbitrary censor, whether judicial, administrative, or legislative, is given the power to suppress and control the press without respect to what have always been recognized as the rules of police power balanced against the constitutionally protected rights.

In *Schneider v. State*, 308 U. S. 147, it was said:

"This court has characterized the freedom of speech and the press as fundamental personal rights and liberties. . . . The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the right lies at the *foundation of free government by free men*. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

Thus we do not assert that the right of freedom of press is an "absolute" right free from interference from the proper exercise of the police power of the state,<sup>6</sup> but we do contend that this statute as construed and applied transgresses rights constitutionally protected beyond the scope of the power of the states under the Tenth Amendment.<sup>7</sup>

<sup>6</sup> *Cantwell v. Connecticut*, 310 U. S. 296, 304, 310; *Schneider v. State*, 308 U. S. 147, 165; *Hague v. C. I. O.*, 307 U. S. 496, 515-16; *De Jonge v. Oregon*, 296 U. S. 353, 364.

<sup>7</sup> *Cantwell v. Connecticut*, 310 U. S. 296, 303; *Schneider v. State*, 308 U. S. 147, 160; *Lovell v. Griffin*, 303 U. S. 444, 450; *Thornhill v. Alabama*, 310 U. S. 88, 97, 98; *Herndon v. Lowry*, 301 U. S. 242, 264; *De Jonge v. Oregon*, 299 U. S. 353, 363; *Near v. Minnesota*, 283 U. S. 697; *Grosjean v. American Press Co.*, 297 U. S. 233, 245, 246.

Mindful of the truly fundamental nature of the freedom of the press in modern democracy, it is now proper to consider more specifically the nature of the challenged publication and the competing need of the state's police power.

## B

**The publications in question related to a matter of fair comment on present-day world events and course of action taken against Jehovah's witnesses in which the public had an interest.**

The indictment specifically singles out two articles appearing in the *Consolation* magazine, issue of January 21, 1942, as being objectionable and unlawful under the statute. The highest court of the state has affirmed this construction of the law, and therefore our consideration is narrowed to a determination of the validity of this law as applied under the Federal Constitution.

The first of these articles is a reprint of an editorial which had appeared in the Lewiston (Maine) *Daily Sun*, an independent newspaper having no connection with the *Consolation* magazine. The editorial speaks for itself and it is therefore sufficient to say that it was one of many editorial comments<sup>\*</sup> appearing in the public press concerning this court's decision in the case of *Minersville District v. Gobitis*, 310 U. S. 586, more commonly known as the "Flag Salute Case". The editor expressed his disagreement with the court's holding and then proceeded to outline his reasons why he thought the ruling "tyranny",<sup>\*</sup> and his proposal for remedying the matter. This entire article was reprinted in *Consolation* without one word of editorial comment.

The article next complained of appeared in the same issue of *Consolation* and was based on a "Monte Carlo dispatch", relating that the system of compulsory flag saluting had originated in the "Catholic schools of France". The

<sup>\*</sup> See *West V'a St. B'd, etc. v. Barnette*, No. 591 Oct. T. 1942 in this Court, appellees' brief, pages 74-80; also, as to "tyranny", cf. Opinion by Judge Parker, Record p. 54, same case.

editor of *Consolation* then observed in seven lines of comment that such news confirmed the claim that the Catholic Hierarchy was covertly pushing that system in America.

The jury has conclusively determined that these utterances are within the pale of the statute, and that appellant distributed same. Therefore on this appeal our attack is directly on the statute itself as so interpreted.

To do this we must first discuss in some measure the limits which this court has set down as governing the privilege of the press to render "fair comment" on matters of public interest. The generous boundary in the civil libel cases given to the press under their privileged right of "fair comment" is well established and familiar to all. But this court has been even more generous in defining limits to which the press may go in its right to comment on matters of public concern. In *Cantwell v. Connecticut*, 310 U. S. 296, 310, Mr. Justice Roberts said:

"In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

The challenged article here primarily deals with this court's ruling in the *Gobitis* flag-salute case. This criticism of the ruling *did not speak any untruth* and neither did it resort to vilification of any man or group of men. It merely gave *constructive criticism* of this widely discussed ruling. Mr. Justice Frankfurter, in *United States v. Morgan*, 313

U. S. 409, 421 (upholding a complaint made by Vice President Wallace against this Court when he was the Secretary of Agriculture), said:

"In publicly criticizing this court's opinion the Secretary merely indulged in a practice familiar in the long history of Anglo-American litigation, whereby unsuccessful litigants and lawyers give vent to their disappointment in tavern or press."

In that case the Secretary had "vigorously criticized the decision." Not long ago the President of the United States very strongly attacked this Court and relegated it to the 'days of the horse and buggy' and made many harsh statements against the Court. It was the President's legal right to do this as an American citizen. We submit that the *Consolation* magazine has the same right. If the time has come when the lower courts inaugurate the rule that the decisions of the Supreme Court of the United States cannot be criticized by the public press and the citizenry, then it is high time that this court *publicly* give assurance that such utterances are not "sedition", but the discharge of an inherent and fundamental *duty* of the public press. This is especially true where the criticism made is in the nature of *constructive* criticism such as here involved. When the editors of the many papers of the nation feel that an encroachment has been made upon the most fundamental rights of the people either by the legislature, executive office, or judiciary, it is the DUTY of such editors to call these matters to the attention of the people, even though they may personally feel (as many do) at odds with the one whose right is infringed. The reason for this is obvious. In the spirit of democracy, and in the name of freedom, these men put their personal judgment and prejudices in the background, and publicly campaign for the defense of the liberty so assailed. The serious error made by the court below is that it has confused this *duty* with the entirely unrelated matter of *sedition*.

The difference between these two matters is as great as that respecting the poles of the earth. The one contemplates the overthrow and destruction of the government, or, as aptly stated and defined by the statute in question: "... matter designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi . . ." As complete antithesis, the other contemplates invigorating, strengthening, and forwarding the cause of the government and the Constitution.

This reveals the mean characteristic of the statute. It leaves to the discretion and judgment of a jury whether a publication falls in one class or the other without giving them any guide or rule of determination or even any semblance of a suggestion as to what the terms loyalty and disloyalty mean. Thus to put into the hands of a jury a penal statute with the penalty carried by this law, is the same as putting a machine gun in the hands of a child. This case itself furnishes a striking example of what might happen were it allowed to stand. To be an editor of a newspaper would be a hazardous occupation indeed, for if a particular utterance could be made to appear objectionable to a jury, the one responsible therefor, *including the newsboy who delivered same*, would be liable to penal servitude for ten years! The result would be the complete demoralization and demolition of the press, and the attendant rapid degeneration of the democracy of which it is an integral part.

The publication in question speaks for itself. It is quite apparent that if this law be sustained in its application to this type of publication, then it becomes impossible for any minority to publish any sort of an article in support of their views. Furthermore, a citizen disinterested in the controversy, or any neutral party, would be prohibited under penalty of law, to publish anything in defense or in favor of a minority view. Further extended, there is nothing in the statute that would prevent private correspondence of such persons, if such fell into the hands of the

prosecuting officials, to be made the basis of an action similar to that here involved. In short, if sustained, this statute will literally destroy all communications of minority groups, and thus reduce this democracy to the tyranny of the lands run by the Nazi-Fascist combine.

It would seem that these matters are so obvious that discussion of them is hardly merited. Yet in the words of Justice Alexander, dissenting in the case of *Taylor v. State*, in the court below:

"My views have been elaborated almost to the measure of dissertation. Yet we have been confronted with an occasion where an assumption that these principles were known and read of all men would seem to have been unwarranted." R. 171.

## C

**The publications in question contained only statements made by Jehovah's witnesses as an official explanation of their attitude toward the national flag and governments of this world in defense of the charges made against them and misunderstandings resulting from false reports concerning their loyalty.**

It becomes important to give some consideration to the purpose and aim of the *Consolation* magazine so that we may see that it is a periodical devoted to matters entirely opposed to and distinguished from those dedicated to the overthrow of the government. It at once becomes clear, upon considering the contents of the single issue of the magazine introduced in evidence, that the purpose of *Consolation* is to keep the public eye on the Kingdom of ALMIGHTY GOD. That this is a purpose entirely proper and laudable, must be conceded. It also prints articles of public interest either constructively criticizing or commending matters affecting the public. The evidence does not show,

nor can an inference be drawn from the exhibit itself, that there is one syllable in the magazine that advocates anything detrimental to the health, welfare, morals or *government* of the American people.

The appellee points an accusing finger at the publication on the ground that it advocates that persons should not salute the flag, which tends to cause "a stubborn refusal" of its readers to render the salute to the national ensign. The courts below have confirmed the accusation. Even if we conceded that this conclusion were justified under the facts (and we have strained our imagination on this point in vain), nevertheless it will be found that no law exists, either in Mississippi or in the Federal Statutes, which makes it mandatory for a civilian to render a salute to the flag, and furthermore it cannot be assumed that a refusal to salute the flag for conscience' sake is "disloyalty". Therefore the statute itself is based on a fallacious assumption. The question of the compulsory salute to the flag has been a widely discussed question in every state in the Union, and is therefore one of national interest to the American people, and to the people of Mississippi. If the flag salute is a matter of importance sufficient to warrant its adoption into the statute law of the state, then surely it is worthy of discussion in the public press, that *the people*, who are responsible for the passage of all law, may know and be informed on the subject.

The Bible, the Word of Almighty God, clearly states at Exodus 20: 2-6:

"I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage. Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visit-



ing the iniquity of the fathers upon the children unto the third and fourth generations of them that hate me; and shewing mercy unto thousands of them that love me, and keep my commandments."

Those words are the TRUTH, and the people of Mississippi have a right to have free access thereto. If the courts rule on a matter so directly affecting the people personally, it must be admitted that the people have a right to read an editorial concerning that decision. Since when have the words of ALMIGHTY GOD become sedition? Since when has fair and honest criticism of the ruling of the Supreme Court become detrimental to the safety of the nation at war?

We well recognize that there are certain matters of truth and fact which cannot be published. These matters deal with the confidential matters of the government, particularly with reference to the armed forces. There are other matters which by their very nature must be kept confidential. But such matters are not involved in this case. The question of the legality and propriety of the flag salute is anything but a confidential matter; on the contrary, as far as Jehovah's witnesses are concerned it is notorious. Its public discussion could by no capricious play of fancy endanger the welfare of the nation, but to the contrary it seems wholly manifest that only by public discussion can the matter be settled.

We submit that the bloody record of persecution of Jehovah's witnesses during the last three years in this country is due to a lack of understanding on the part of the public as to the real attitude of Jehovah's witnesses. If a way has now been found to silence open discussion of the matter in the press, can it ever be hoped that an understanding will be reached? The appellant herein allegedly distributed this publication containing the article pertaining to the flag to a person that might not otherwise ever have any other means of knowing about the issue. That person testified, as did the officer who made the arrest, that after

reading the magazine she had more respect and love for the country and flag than before. Yet for this act, the appellant stands committed to a ten-year penitentiary sentence. A more flagrant travesty upon the principles of free press can hardly be imagined.

By informing the people of Mississippi, who during the past three years have spattered the pages of their history with the blood of their fellow citizens, Jehovah's witnesses, appellant was performing a public service of merit, that if left unfettered would eventually result in the healing of an ugly wound. *Consolation* did not advocate, nor does it now advocate, that any person refrain from saluting the flag. What it does attempt to do is clarify the position of Jehovah's witnesses on this subject, so as to clear up misunderstanding, remove hate, and destroy unreasoning prejudice. In all candor, this is a proper and lawful purpose.

## D

**There is no evidence that the writings complained of constitute a clear and present danger that any of the things aimed against by the statute will result.**

Mr. Justice Holmes, in the case of *Schenck v. United States*, 249 U. S. 47, 52, laid down the principle thus:

"The question in every case is whether words used are used in such circumstances and are of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that Congress [or the Mississippi legislature] has the right to prevent." [Bracketed words added]

Having determined the nature of *Consolation* magazine, and the circumstances under which it was being distributed, it must next be considered whether or not this action combined with the statements appearing in the magazine con-

stitute a clear and present danger to the interests which the state is empowered by the people to protect.

Under Point One, subheads D, E, and G, in the brief filed in *Taylor v. The State*, pages 42 to 46, 46 to 59, and 59 to 62, respectively, we have exhaustively reviewed this subject, and discussed the line of "sedition cases". What is there said may appropriately be considered at this point, and we make specific reference to that discussion, and thereby eliminate needless repetition.

Upon a consideration of the precedents laid down in the above-mentioned cases it becomes clear that no such "clear and present danger" exists under the facts of this case, and hence as the statute applies to the appellant in throttling her liberty to freely exercise her right of press within proper bounds, such law becomes invalid and unconstitutional.

### E

**The distributor of the literature and the publisher are equally protected against application of the statute to their activity because distribution as well as publication or printing is protected.**

Chief Justice Hughes in his opinion in *Lovell v. Griffin*, 303 U. S. 444, quoted with approval the case of *Ex parte Jackson*, 96 U. S. 727, 733:

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value'."

No one would have the pluck to contend that a state might pass a statute under their police powers previously restraining the publisher from printing certain literature which it deems objectionable. Such power of *censorship*, exercised PRIOR to publication is not included in the Ameri-

can jurisprudence. The Supreme Court has extended this principle to extend to that same publication **AFTER** it is printed. Thus the protection of the First Amendment is made to extend a protecting hand over the *institution* of the press. From the time the thoughts flow from the pen of the author to the point where the fruit of the press reaches the hand of the reader, the protection of the privilege of free expression and free action in distributing same is allowed to proceed unhampered by legislative restraint.

In this case it is not contended that appellant violated any law in the *manner* in which she distributed the literature, but the law is alleged to have been violated by the act of distribution itself. This is a frontal assault on the guarantee of the First Amendment! If the publisher of the literature in question was limited to the State of Mississippi for distribution of its publications, it would be found that this statute would be just as effective as an interdiction in the nature of prior censorship of publication, as it is in the role of a strangling noose on the right of distribution. As this court has previously recognized, the act of publication and circulation are inseparably joined.

What the appellant was doing at the time of her alleged transgression of the law, was distributing the "fruit of the press". We submit that this activity is equally and inseparably protected with the activity of publication, and cite as authority for the proposition *Lowell v. Griffin*, supra; *Hague v. C. I. O.*, 307 U. S. 496; *Schneider v. State*, 308 U. S. 147, and *Cantwell v. Connecticut*, 310 U. S. 296.

## F

**As construed and applied, the statute absolutely prohibits exercise of the right of freedom of the press previously condemned by this court.**

Looking at the matter in a more practical light, the pernicious effect of its doctrine becomes apparent. Here is no *regulatory* measure, enacted in the interests of the

health or safety of the people. The opinion of the majority in the court below makes it clear that publications of this type are *absolutely prohibited*. It is true that the statute has been applied to only one publication of many hundreds in the State of Mississippi. However, if sustained in this application, the same doctrine can be arbitrarily applied to any or all of the other publications in the state, for such period of time as the war lasts.

The protective shield thus pierced by the spearhead of misguided patriotic zealotry, the cherished right is thrown down at the mercy of the legislature and blinded juries, raped and ravished and left as dead—the victim of the global war. Election publications in the form of leaflets, magazines, books, newspapers, and other familiar mediums might be stifled with impunity and their promoters jailed as enemies of the state. Any person apprehended with a copy of the Bible who has dared to make mention of the requirements of God's law to another, may be publicly discountenanced as a rogue and sentenced to prison. Parents, attempting to instill in their children a respect and reverence for their Creator and a love of the flag and their country, might have a difficult task indeed if the child saw its parent dragged off to court as a public enemy for no offense other than having given his offspring a book containing the first two of the ten commandments.

These suggestions seem fantastic and improbable of occurrence, yet it is a fact that appellant here has been convicted by the highest court of Mississippi of merely having been present in the home of a negro woman who happened to have lying on her table a copy of the *Consolation* magazine, at the time an officer of the law burst into the room. For this "offense" appellant has been sentenced to the penitentiary for a term of ten years or the duration of the war. If appellant had come to the house of the negro woman as a murderess, and shot the woman down in cold blood, she probably would have received a much lighter sentence under Mississippi law.

What discordant reasoning could give birth to such gross inequity? The answer may be found in the pages of history identified as the unreasoning mace of intolerance. Blinded by malice and shackled by hate, men often sacrifice their goods, their hope and life itself in an attempt to stifle by force those who voice dissent to their view. This passion had been thought discarded from the philosophy of political science and government when the last of the medieval inquisitors went down as a victim of his own machinations. But this statute is a subtle attempt to assert the centuries-old evil design of the intolerant into the modern American government, which was created, planned and put into operation by a people determined to shut out this very thing.

Let it not be overlooked that in providing for a complete and obviously arbitrary prohibition, Intolerance has been handed a powerful whip with which she can lash out and strike down those seeking shelter beneath the arm of Liberty. This court has previously announced its unwillingness thus to forsake the cause of freedom and, in an unbroken line of cases, as the record stands now, effectively turned aside those who, advancing sundry excuses, sought to avoid the constitutional limitation upon their desires to infringe the liberty of those they despise. *Lovell v. Griffin*, supra; *Hague v. C. I. O.*, supra; *Schneider v. State*, supra; and *Cantwell v. Connecticut*, supra.

## G

**The cases involving publications show that the rule applied by this court does not allow abridgment of the right of freedom of the press in the circumstances shown in this case.**

We have given careful examination and consideration to the sedition cases that have come before this court. None of those cases can be fairly said to be "on all fours" with this case, but the principles they lay down, and the limits defined thereby do make it plain that the publications here

in question are well within the limit defined as proper and lawful. To cite those cases here would be needless repetition, and we therefore make specific reference to such cases that appear under point ONE, subdivision G, of the brief filed in *Taylor v. State*, pages 59 to 62.

## FOUR

**The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.**

The facts of this case furnish a classic example of the results of a vague statute. The evils at once are apparent, especially in a field so delicate as the one entered upon. We feel that one of the major inequities of this case grows out of abuse of the latitude granted by the statute. We have also considered this matter under point FOUR of the brief filed in *Taylor v. State*, pages 80 to 87, and by specific reference incorporate that entire discussion herein the same as if it were printed at length at this point.

## Conclusion

At this moment humanity is caught in the pangs of the greatest political upheaval in its entire history. The clamor of the war machine, the heat of battle and the swiftly changing international scene has excited many to the point of losing sight of what is taking place, and thus blinded, they become hopelessly enmeshed in the tangle of conflicting impulses. But as in centuries past, the thing that has now become almost a reality has steadily pushed forward



through its various stages of development. Beginning with clans and tribes, the worldly government of man has progressively advanced in successive steps through the feudal age to the domain of the small kingdoms; from the small kingdoms to the many nations; from the many nations to fewer nations; fewer nations to the present division into the two opposing world powers; and tomorrow—the dream of the philosopher—a world state.

This progression has been directly in ratio to the advancement of science in communication and transportation, which has now reduced the barriers between members of the human family to insignificance. Thrown into proximity with one another this final upheaval has occurred.

Without embarking upon a dissertation of political science, it is sufficient for the purposes of this brief to note that communication, the bulk of which has been written and printed, has been the guiding measure of man's progress. If the founding fathers considered printing important, and the liberty of the press essential, then by force of reason we find that it is infinitely more important in the modern world. The nations are now deadlocked in a struggle the outcome of which must be the survival of the fittest. If this country expects to assume leadership in the world, it must now key its program with an eye to the future.

The President of the United States has pledged the nation to the establishment of the four freedoms in the earth, thereby indicating the determination of the American people to preserve the American way of life and to extend its privileges to all peoples of the world. This is a task of immense proportion, and the question is now a timely one: What part will the *press* play in this matter?

We submit that the press is the principal means whereby the peoples may now be enlightened to keep pace with the things which lie ahead. Democracy has for its main pillar of support an enlightened populace—a capable human sovereign. But if the populace must depend on the press to keep them informed the press must be healthy,

vigorous, unfettered and unbound; free to campaign for reform, enlighten the mind of man, call to task negligence in public officials, and perform the many complex duties which the founding fathers realized to be fundamental to democracy.

Not the federal or state governments, but "We the people of the United States of America" are the *sovereign power*! The government, as such (whether federal or state), is a mere agency of the *sovereign*—"the people of the United States". The *sovereign's* agent cannot fetter the principal—"the people of the United States"! The agent cannot rightly restrain the exercise by the *sovereign* of "his" fundamental inherent rights. The agent's authority springs from and is restricted by the sovereign's code—THE CONSTITUTION. (*McCulloch v. Maryland*, 4 Wheat. 316) The sovereign people cannot exercise their kingly prerogative if they are kept in ignorance through legislative embezzlement by the "agent" (under guise of national emergency) of the means by which they are enlightened—freedom of the press. It is conceded that free press is Democracy's essential supporting pillar. When cut away, this form of government falls with it.

So fundamental did the statesmen who planned and ordered this democracy consider the freedom of the press that some of them stated, as in the New Hampshire Constitution, Section 22:

"The liberty of the press is essential to the security of freedom in a state. It ought, therefore, to be inviolably preserved."

Today, when enemies of freedom have declared an all-out assault on these liberties, the nation must necessarily guard with jealous pride the secret of her power and strength—the enlightened sovereign people. Instead of short-sightedly imposing burdens upon this fundamental of democracy, as is attempted by the Mississippi Legislature,

every encouragement should now be given the press to further strengthen the sovereign. To be sure, there may be abuses, but when these take on the form of unlawful action, proper criminal statutes may promptly deal out justice. But the over-all fruitage will show an increase in 'enlightened opinion and right conduct on the part of the citizens of this democracy.' *Cantwell v. Connecticut*, supra.

Jehovah's witnesses, though plain and insignificant people of earth, are all keenly aware of the situation that now exists. This has been made possible by the grace of God and the diligent use of the Bible and millions of printed books. They realize that this is the very time marked in the Word of God as being the season for establishment of the kingdom of God ruled over by Christ Jesus, which government will bring to man here on earth the blessings of security and happiness universally desired by the hearts of honest men and prayed for in words given by Jesus: 'Thy kingdom come on earth.' (Matthew 6:9-13) The appearance of man's "new world order" is to them a sign certain of the approach of the time for Jehovah's battle at Armageddon, when man will no longer exercise sovereign dominion, but Jehovah's duly constituted "King of kings, and Lord of lords" will shoulder that. (Isaiah 9:6, 7; Daniel 7:13, 14) The Most High has now commissioned His faithful ones on earth to give this message to all peoples in all nations of earth, and each one of such witnesses to Jehovah's purposes will carry out this divine commission regardless of consequence or circumstance.

Not only do Jehovah's witnesses have the constitutional right thus to bring this message to the people, but the people desiring this information likewise have a right to *receive* the message and thus put themselves in line for life everlasting.

Obviously neither the court nor the legislature, nor the executive, has the power to decide for the people the verity of this message. Intrinsically this is a matter that must be

submitted to the individual conscience of the people. However, these departments do have the responsibility as servants of the people to keep open the avenues of communication that the sovereign people themselves have dedicated and ordained for this purpose. The moment that such departments of government fall short of their duty, that moment marks the end of the distinguishing feature of *democratic* government.

Like a temple supported by sturdy columns, democracy has proved its merit through a changing period of human history, and, now imperiled by the assault of the enemies of freedom, it stands capable, ready and willing to defend itself. But now it is asserted that under the stress of the time the freedom guaranteed to the individual must give way to *the power of the state*. In the light of history, the nature of democracy, and the present situation, this is at once recognized to be a pernicious fallacy, which, if adopted would pull out from under the democratic structure an essential supporting column, leaving the entire building to collapse into the ruins of a medieval autocracy. Without a free press, we submit that a democracy cannot exist. Without it the other freedoms are unable and inadequate to support the type of institution the forefathers contemplated. Therefore, in the name of the democracy which Americans love, we petition this court to reverse the holding of the Supreme Court of Mississippi and discharge appellant awarding costs.

Respectfully and confidently,

HAYDEN C. COVINGTON

117 Adams St., Brooklyn, N. Y.

*Attorney for Appellant*

# CLERK'S COPY.

## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1942

**No. 828**

---

CLEM CUMMINGS, APPELLANT

*vs.*

THE STATE OF MISSISSIPPI

---

APPEAL FROM THE SUPREME COURT OF  
THE STATE OF MISSISSIPPI

---

FILED MAR 15 1943 , 194 .

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## **Transcript of the Record**

PROCEEDINGS AND JUDGMENT IN THE  
CIRCUIT COURT OF WARREN COUNTY, MIS-  
SISSIPPI, AT A TERM THEREOF BEGUN AND  
HELD AT THE COURT HOUSE OF SAID COUN-  
TY, IN THE CITY OF VICKSBURG, THE FIRST  
MONDAY OF JULY A.D. 1942, BEFORE THE  
HONORABLE R. B. ANDERSON, JUDGE IN  
AND FOR THE NINTH JUDICIAL DISTRICT  
OF SAID STATE PRESIDING, IN CASE THERE-  
IN PENDING, STYLED AS FOLLOWS, TO-WIT:

CHARGE: Distributing printed matter to encourage  
disloyalty to the United States of America.

VERDICT: "Guilty as charged in the  
Indictment."

SENTENCE: "Imprisonment in the State Peniten-  
tiary for the period or duration of pres-  
ent war, provided such said imprison-  
ment shall not continue to be in effect  
for more than a period of Ten (10)  
years from this date."

DATE OF SENTENCE: "July 22, 1942."

T. J. Lawrence, District Attorney  
Jno. J. O'Neill, County Pros. Att'y  
J. H. Culkin, of Culkin, Laughlin & Thames

G. C. Clark, Attorney for Defendant

## Organization of Court

State of Mississippi, County of Warren.

BE IT REMEMBERED that a Circuit Court in and for said County and State was begun and held at the Court House thereof, in the City of Vicksburg, on the first Monday of July A.D., 1942, being the 6th day of said month and the time and place appointed by law for the disposition of Criminal Business;

There were present Honorable R. B. Anderson, Judge of the Ninth Judicial District of the State Presiding; Honorable T. J. Lawrence, District Attorney in and for said district; Honorable Jno. J. O'Neill, County Prosecuting Attorney in and for said County; T. B. Wright, Court Reporter in and for said District; J. M. Buchanan, Sheriff of said County and W. J. Foley, Clerk of said Court.

Among other cases tried and disposed of at this Term of Court, was case numbered 4280, THE STATE OF MISSISSIPPI versus CLEM CUMMINGS, the papers and proceedings of which are in the words and figures as follows, to-wit:

### ORGANIZATION OF THE GRAND JURY

And afterwards, to-wit: On the 6th day of July, A.D., 1942, the same being a day of the regular July Term 1942, the following entry was made on the minutes of said Court on page 209 of Minute Book "A-2", to-wit:

This day the names of Sixty-two (62) Jurors drawn as aforesaid being each written on a separate sheet of paper and distributed in Five (5) Boxes in open Court, drew from the said Jury Boxes in rotation, when the following named Grand Jurors were drawn to-wit:

L. T. Lee, John C. Hutchinson, Wm. Acuff, E. J. Platte, F. H. Williams, T. R. Paine, C. F. O'Sullivan,

Dave Laudenheimer, Earl C. Fife, A. H. Hoseman, H. F. Hammett, Chas. H. Bell, N. D. Feibleman, Chas. A. Ricketts, R. J. Perry and Chas. Leist.

Thereupon the Court appointed H. F. Hammett, Foreman of the Grand Jury to whom the oath as prescribed by law was duly administered in open Court and in the presence of the other Grand Jurors, and thereupon the other Grand Jurors took the same oath on their parts as the Foreman had taken on his part, and afterwards received the charge of the Court, concerning their duties, retired to consider same, attended by Harry Lee who was sworn to attend them as Bailiff.

### **Report of Indictment**

And afterwards, to-wit: On the 10th day of July, A.D., 1942, the same being a day of the regular July Term, 1942, the following entry was made on the Minutes of said Court on page 215 of Minute Book "A-2", to-wit:

The Grand Jurors of the State of Mississippi, elected, summoned, empanelled, sworn and charged to inquire in and for the body of the County of Warren, came into Court attended by their proper officer, there being Sixteen (16) of their number present, and upon their oaths and through their Foreman presented to the Court Six (6) True Bills of Indictment, which were endorsed a "True Bill" and the same signed, were presented to the Court, and filed by the Clerk with his endorsement of filing thereon, and numbered as follows to-wit: 4278, 4273, 4280, 4281, 4282 and 4283.

The indictment numbered 4280 is the indictment against the defendant herein, and it is in the words and figures as follows, to-wit:

CIRCUIT COURT      JULY TERM, 1942  
STATE OF MISSISSIPPI, WARREN COUNTY

The Grand Jurors of the State of Mississippi, elected, summoned, empaneled, sworn and charged to inquire in and for the body of Warren County, State of Mississippi, at the term aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that Clem Cummings, late of the County aforesaid, on or before the 9th day of July, A.D. 1942, with force and arms, in the County aforesaid, and within the jurisdiction of this Court, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled: "Children", and said book entitled: "Children" being attached hereto and made a part of said indictment as though copied fully herein; and various other books, leaflets and pamphlets, a further exact description of which said books, leaflets and pamphlets aforesaid is to the Grand-jurors unknown, and which said various other books, leaflets and pamphlets being attached hereto and made a part hereof as though copied fully herein, and all of which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of Mississippi.

Contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

(Signed) T. J. Lawrence  
District Attorney.

And the within writ is endorsed as follows, to-wit:

No. 4280

**THE STATE vs. CLEM CUMMINGS**

Distributing printed matter to encourage disloyalty  
to the U. S. Government

**NO PROSECUTOR**

**WITNESSES:**

Tom Byrd

J. M. Buchanan

Chief Hogaboom

N. N. Hullum

W. F. McCormick

**A TRUE BILL**

H. F. Hammett

Foreman of Grand Jury

Filed this the 10 day of July, 1942.

W. J. FOLEY, CIRCUIT CLERK.

**Capias**

And afterwards, to-wit: On the 10th day of July, 1942, the same being a day of the regular July Term A.D. 1942, the Clerk of said Court issued and delivered to the Sheriff of said County CAPIAS for said defendant, which said CAPIAS is in the words and figures as follows, to-wit:

**THE STATE OF MISSISSIPPI:**

To The Sheriff of Warren County—GREETINGS:

We command you forthwith to take the body of Clem Cummings if to be found in your County, and him safe-

ly keep, so that you have his body before the Circuit Court, in and for said County and State, at the Court House, in the City of Vicksburg, INSTANTER, to answer an indictment of the State of Mississippi against Clem Cummings on a charge of Distributing printed matter to encourage Disloyalty to the United States Government, and have then and there this writ.

WITNESS my hand and Seal of said Court at office in the City of Vicksburg, this 10 day of July, A.D., 1942.

W. J. Foley, Clerk

### SHERIFF'S RETURN

The within named defendant Clem Cummings was taken into custody and later released on bond.

This 10 day of July, 1942.

J. M. BUCHANAN, SHERIFF  
BY: O. J. BORI, D.S.

And within writ is endorsed on back as follows, to-wit:

No. 4280

### WARREN CIRCUIT COURT

July Term, A.D., 1942

State of Mississippi vs. Clem Cummings . . . CAPIAS  
Returnable INSTANTER 1942

### Arraignment

And afterwards, to-wit: on the 10th day of July, 1942, the same being a day of the regular July Term A.D. 1942, the following entry was made on the Minutes of said Court on page 216 of Minute Book "A-2", to-wit:

No. 4280

**THE STATE vs. CLEM CUMMINGS**

Distributing Printed Matter to Encourage Disloyalty to the United States.

Came the District Attorney who prosecutes for and on behalf of the State, and also came the defendant in his own proper person, attended by his counsel, and the said defendant being solemnly arraigned and charged on the indictment herein, says that he is Not Guilty as therein charged, and for his trial puts himself upon the Country and the State doth the like;

It is thereupon considered by the Court and so ordered that the defendant be remanded to await trial.

**Demurrer to Indictment**

And afterwards, to-wit: On the 10th day of July A.D. 1942, the same being a day of the regular July Term 1942, the defendant filed his Demurrer to Indictment, which said Demurrer is in the words and figures as follows, to-wit: -

**IN THE CIRCUIT COURT OF  
WARREN COUNTY, MISSISSIPPI**

**9TH JUDICIAL DISTRICT**

No. 4280

**STATE OF MISSISSIPPI vs. CLEM CUMMINGS**

Now comes the above named defendant, in the above entitled and numbered cause and file this his demurrer to the indictment returned and filed herein against him and as grounds therefor say:



## O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly *these* defendants, of *their* rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

## T W O

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of *these* defendants because Section 1 thereof deprives *these* defendants of *their* inherent rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

## T H R E E

The statute under which the indictment is drawn, known as House Bill 689 of the regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitu-

tion and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection *to* [of] the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense

or the violation of any law of the State of Mississippi.

WHEREFORE defendants pray that the Court upon consideration hereof, sustain this DEMURRER to the indictment and dismiss the indictment and order the defendants discharged with *their* costs, and defendants pray for such other and further relief as *they* may show *themselves* justly entitled to.

(Signed) G. C. Clark

" Grover C. Powell

" Hayden C. Covington

Attorneys for Defendants

STATE OF MISSISSIPPI, WARREN COUNTY

I, G. C. Clark, Attorney of record for defense, state that this demurrer is not filed for delay only, but that I believe he has a just and meritorious cause for said demurrer and that same should be sustained.

(Signed) G. C. Clark

ENDORSED:

FILED: JULY 10, 1942,

W. J. FOLEY, CLERK.

### **Order Overruling Demurrer**

And afterwards, to-wit: On the 20th day of July, A.D., 1942, the same being a day of the regular July Term, 1942, the following entry was made on the Minutes of said Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

#### **THE STATE vs. CLEM CUMMINGS**

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government

Came on for hearing this day, defendant's Demurrer to Indictment filed against him, and the Court having heard and considered the same, is of the opinion that said demurrer should be overruled;

It is thereupon considered by the Court and so ordered that said Demurrer be, and same is hereby overruled.

### **Motion to Quash Indictment**

And afterward, to-wit: On the 20th day of July, A.D., 1942, the same being a day of the regular July Term 1942, the defendant filed his Motion to Quash Indictment, which said motion is in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF  
WARREN COUNTY, MISSISSIPPI  
9TH JUDICIAL DISTRICT

STATE OF MISSISSIPPI vs. CLEM CUMMINGS,  
*Defendant*

Now come the above named defendants in the above entitled and numbered cause and file this *their* MOTION TO QUASH THE INDICTMENT returned and filed herein against *them*, and as grounds therefor say:

O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly *these* defendants, of their rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of Constitution of the State of Mississippi, the First Amendment Section 1 of the Fourteenth Amendment to the United States Constitution.

T W O

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of *these* defendants because Section 1 thereof deprives *these* defendants of *their* inherent rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18

and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

## SIX

The statute under which the indictment is drawn, know as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

## SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

WHEREFORE defendants pray that the Court upon consideration hereof, sustain this MOTION TO QUASH the indictment and dismiss the indictment and order the defendants discharged with *their* costs, and defendants pray for such other and further relief as *they* may show *themselves* justly entitled to.

G. C. Clark  
Grover C. Powell  
Hayden C. Covington

Attorneys for Defendants

ENDORSED & FILED:  
JULY 20, 1942,  
W. J. FOLEY, CLERK.



## **Order Overruling Motion to Quash Indictment**

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular Term 1942, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

### **THE STATE vs. CLEM CUMMINGS**

Distributing Printed Matter to encourage Disloyalty to the U.S. Government

Came on for hearing this day, Motion to Quash Indictment filed by the Defendant and the Court having heard and considered the same is of the opinion that said Motion should be overruled:

It is thereupon ordered and adjudged that said Motion to Quash Indictment be, and the same is hereby overruled.

## **First Motion for Peremptory Instruction**

And afterwards to-wit: On the 20th day of July A.D. 1942 the same being a day of the regular July Term A. D. 1942, the defendant filed his Motion for Peremptory Instruction, which said motion is in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF  
WARREN COUNTY, MISSISSIPPI

NINTH JUDICIAL DISTRICT

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS,  
*Defendant (s)*

Now come the above Defendants in the above entitled and numbered cause and file this *their* MOTION FOR PEREMPTORY INSTRUCTION at the close of the State's evidence and before the defendants offer any evidence, and as grounds for this motion say :

O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience. freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of *these* defendants because Section 1 thereof deprives *these* defendants of their inherent rights of freedom to worship Almighty God accord-

ing to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment of the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

## S I X

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

## S E V E N

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undisputable evidence shows that the defendants are not guilty of violating any law of the State of Mississippi, and *are* not guilty of the act charged in the indictment.

WHEREFORE the defendants pray that the Court sustain this motion for peremptory instruction, exclude all the evidence offered by the State and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty," and render a judgment dismissing the indictment and discharging the defendants with *their* costs, and defendants pray for such other further relief as *they* may show *themselves* justly entitled to.

(Signed) G. C. Clark  
           "      Grover C. Powell  
           "      Hayden C. Covington

Attorneys for Defendants

ENDORSED:  
 FILED July 20, 1942  
 W. J. FOLEY, CLERK.

## **Order Overruling Motion for Peremptory Instruction**

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term 1942, the following entry was made on the Minutes of the Court on page 221 of Minute Book "A-2", to-wit:

No. 4280

### **THE STATE vs. CLEM CUMMINGS**

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government

The motion for peremptory instruction, which was duly filed at the close of the State's evidence, by defendants herein, came on for consideration and the Court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

**ORDERED, ADJUDGED and DECREED** that said motion to give peremptory instruction is overruled, to which action of the Court the defendants are allowed an exception.

(Signed) R. B. Anderson, Judge, Circuit Court

### **Instructions**

And afterwards, to-wit: On the 20th day of July, 1942, the same being a day of the regular July Term A.D. 1942, the following **INSTRUCTIONS** were **ASKED** by the **STATE** and the **DEFENDANT** and were **GIVEN** and **REFUSED** as follows, to-wit:

### **Instructions Given State**

The Court instructs the Jury for the State, that if you believe from all the evidence in this case, beyond a reasonable doubt, that the defendant, Clem Cummings, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled: "Children", and said book entitled: "Children" being attached hereto and made a part of said indictment as though copied fully herein; and all of which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of Mississippi, then the defendant is guilty as charged in the indictment, and it is the duty of the jury to so find.

**GIVEN AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

The Court charges the Jury for the State, that you do not have to actually know that the defendant is guilty before you can convict him. It is only necessary that you should believe from all the evidence in this case, beyond a reasonable doubt, that he is guilty, and if you do so believe from all the evidence in this case, beyond a reasonable doubt, that the defendant is guilty, then it is your duty to so find.

**GIVEN AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

The Court further instructs the Jury for the State, that if in this case you find the defendant guilty, then your verdict may be in the following form, to-wit:

"We, the Jury, find the defendant guilty as charged in the indictment."

**GIVEN AND FILED:**

July 20, 1942

**W. J. FOLEY, CLERK**

### **Instructions Given Defendant**

You are instructed that Jehovah's witnesses have a right to believe, if they so desire, that to salute the flag is worshipping an image, and if they decline to salute the flag on this ground, the same would not be in violation of any law as charged under the indictment. To force one to salute the flag contrary to conscientious scruples as result of his faith and belief and contrary to his form of worship, would be in violation of the First and Fourteenth Amendments to the Constitution of the United States; and you cannot consider defendants refusal to so salute in arriving at your verdict.

**GIVEN AND FILED:**

July 20, 1942

**W. J. FOLEY, CLERK**

The term "Reasonable doubt" is a doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your conscience and after you have fully investigated the credible evidence and compared it in all of its parts you can say, 'I doubt if he is guilty', then it is a reasonable doubt. It is a doubt which settles in your judgment and finds a resting place there, and which produces in your mind a grave uncertainty as to the verdict to be given.



GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that there is no statute or law of the State of Mississippi which requires an adult person not in attendance at the public schools to perform the salute to the American flag or any flag, and in arriving at your verdict you cannot consider the fact that the defendant refused to salute or now refuse to salute the American flag.

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

The court instructs the jury that the State must prove that the defendant did disseminate the teachings in question with the willful intent to cause disloyalty and disrespect to the flag and government of the United States and of the State of Mississippi and a stubborn refusal to salute the flag of the United States and unless you believe that that was true beyond every reasonable doubt, then your verdict should be, "We, the jury find the defendant not guilty".

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

## **Instructions Refused Defendant**

The Court instructs the jury for the defendant that your verdict should read, "We the jury find the defendant not guilty as charged".

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

You are instructed that words spoken or printed must be more than a theoretical discussion, and before such can be made the basis of a conviction, you must find from the evidence beyond a reasonable doubt that such words are of such a nature as to create a clear, immediate and present danger that they will bring about the overthrow by force and violence of the Constitution, laws and government of the State of Mississippi and the United States, which you must find from the evidence beyond a reasonable doubt to be a clear, immediate and present danger. If you fail so to find or have a reasonable doubt thereof, defendant is entitled to an acquittal.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

You are instructed that in this country every citizen has the absolute right to freely distribute literature and to speak freely upon any subject and thereby express himself and give any opinion concerning any matter without being held answerable therefor to the State of Mississippi, so long as he does not advocate the overthrow of the government, the Constitution and laws thereof, by himself or others, by force and vio-

lence, and if you so find, or if you have a reasonable doubt thereof, you will acquit defendant.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

You are instructed that the defendant has a legal right to print, sell, publish, circulate and otherwise distribute literature which attacks any religious principle, dogma, or doctrine, or any political belief, dogma, or doctrine, and to persuade others to his point of view, the defendant may resort to exaggeration, to vilification of men who have been or are prominent or now in church and state, because the people have ordained in the light of history, that in spite of excesses and abuses this liberty is essential to enlightened opinion and democracy, and if there is any evidence of such you will not consider it in arriving at your verdict.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

The defendant offered in evidence and contends that he does not advocate or teach orally or in writing not to salute the flag or not bear arms in defense of the country, but that he merely declares the commands of Almighty God with reference thereto. If you find and believe that the defendant does not advocate and teach, but merely declares the commands of Almighty God, or if you have a reasonable doubt thereof, you will acquit the defendant.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

You are instructed that according to Section 6 of Article 3 of the Constitution of the State of Mississippi the people of this State have the inherent right to alter and abolish their form of government whenever they deem it necessary to their safety and happiness, and every person has the right to advocate a change in the form of government provided that he does not advocate the overthrow thereof by force and violence; and if you find or believe from the evidence, or have a reasonable doubt, that the defendant advocated the establishment in due time of God's Kingdom described by the defendant as Jehovah's Theocracy, as foretold in the Bible, and if you find and believe from the evidence, or have a reasonable doubt, that the defendant in advocating the establishment of such Theocracy does not urge a change in the present form of government by force and violence, you will acquit the defendant and by your verdict say: "We the jury find the defendant not guilty".

**REFUSED AND FILED:**

July 20, 1942

**W. J. FOLEY, CLERK**

You are instructed that under Section 13 of Article 3 of the Constitution of the State of Mississippi freedom of press and of speech shall be held sacred, and the State cannot interfere with the exercise thereof so long as the individual does not advocate the overthrow of the government by force and violence.

**REFUSED AND FILED:**

July 20, 1942

**W. J. FOLEY, CLERK**

You are instructed that under Section 18 of Article 3 of the Constitution of the State of Mississippi each and

every inhabitant of the State is granted free enjoyment of all 'religious sentiments' and the different modes of worship shall be held sacred and the right thereby secured to every one to worship God according to the dictates of his conscience shall not be interfered with or denied by law unless the exercise thereof is injurious to public morals and dangerous to the peace and safety of the State, from which exercise of the right said danger must be found to be clear, immediate and present and not speculative in any indefinite time in the future. If you believe or find from the evidence, or have a reasonable doubt, that the defendant in the performance of the acts charged in the indictment was exercising his right to worship Almighty God according to the dictates of his conscience in distribution of said literature, and you further find that the exercise of such right does not endanger immediately, clearly and presently the peace and safety of the State, then you will acquit the defendant and by your verdict say: "We the jury find the defendant not guilty".

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that according to the case of *Ex parte Milligan*, decided by the Supreme Court of the United States during the Civil War, reported in 4 Wall. 2, 'The Constitution of the United States is a law for *rulers* and people equally in war and peace; it covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the mind of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy

and despotism. But the theory of necessity on which it is based is false for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

You are instructed that regardless of how ridiculous, unreasonable and objectionable a particular belief or practice with reference to the laws laid down by the Creator in the Bible may appear to be, to permit the judge or jury to intrude their powers into the field of opinion and to restrain the profession or propagation of principles alleged to be based on the Bible on the supposition of their ill tendency is a dangerous fallacy which destroys all freedom of worship of Almighty God. It is not for you to say that the activity of the defendant is not an act of worship. You must assume that it is and can only convict the defendant for the exercise thereof in this case when you find or believe that he advocates the overthrow of the government by force and violence, clearly, immediately and presently.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

You are instructed that the defendant has the right to worship Almighty God according to the dictates of the heart, to adopt and to hold any opinion whatsoever on the subject of the Bible, and to do any act such as to distribute the literature in question, or to forbear to do any act such as to refuse to salute the flag of the United States, the doing or the forbearing of which does not

seriously and immediately endanger the public morals, health and safety.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

You are instructed that according to the Constitution of the State of Mississippi no defendant in a criminal case can be convicted for the crime of sedition or treason except from the mouths of two witnesses other than the defendant himself.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

Evidence has been offered that defendant takes a position of strict neutrality as to the wars between nations of the world, and because of such position they refuse to participate in any capacity for any nation in such wars. You are specially instructed that such evidence is immaterial to the charge of sedition and should be disregarded and not considered in arriving at your verdict.

**REFUSED AND FILED:**

**July 20, 1942**

**W. J. FOLEY, CLERK**

Freedom of speech and freedom of the press are guaranteed and protected by the Constitutions of Mississippi and the United States, and this liberty is not confined to newspapers but necessarily embraces pamphlets and leaflets pertaining to matters of government and the Bible. If you find and believe from the



evidence or have a reasonable doubt that defendant *were* engaged in activity of 'free press' and 'free speech' you will acquit the defendant and you by your verdict will say: "We the jury find the defendant not guilty".

**REFUSED AND FILED:**

July 20, 1942

**W. J. FOLEY, CLERK**

You are instructed that defendant and all other of Jehovah's witnesses have a right to call upon the people and to knock on the doors and to ring the doorbell at the homes of the people, and to bring to the attention of the people the recorded Word of God, by means of the literature which they distribute and the phonograph records which are used to reproduce recorded Bible talks; and that to knowingly and willfully endeavor to deprive them of such civil liberties guaranteed under the First and Fourteenth Amendments to the United States Constitution by color of state law would be in violation of Sections 51 and 52 of Title 18, United States Code Annotated.

**REFUSED AND FILED:**

July 20, 1942

**W. J. FOLEY, CLERK**

### **Motion for Directed Verdict**

And afterwards, to-wit: On the 20th day of July A.D. 1942 the same being a regular day of the July Term A.D. 1942, the following Motion was filed by the defendant, said Motion being in the following words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF  
WARREN COUNTY, MISSISSIPPI  
NINTH JUDICIAL DISTRICT

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS,  
*Defendant (s)*

Now come the above defendants in the above entitled and numbered cause and file this *their* MOTION FOR DIRECTED VERDICT at the close of the case and when all evidence is in, and as grounds therefor say:

O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

T W O

The statute under which the Indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Section 1 thereof deprives these defendants of their inherent rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press

and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 4 of the Mississippi Constitution and Section 1 of Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the public police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

## S I X

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

## - S E V E N

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

## E I G H T

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undisputable evidence shows that the defendants are not guilty of violating any law of the State of Mississippi, and are not guilty of the act charged in the indictment.

WHEREFORE defendants pray that upon consideration hereof the Court exclude all the evidence, grant this motion and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty," and render a judgment dismissing the indictment and discharging the defendants with their costs, and defendants pray for such other and further relief as they may show themselves justly entitled to.

ENDORSED: (Signed) G. C. Clark  
 FILED July 20, 1942 Grover C. Powell  
 W. J. FOLEY, CLERK. Hayden C. Covington

Attorneys for Defendants

## **Order Overruling Motion of Defendant to Peremptorily Instruct the Jury**

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

### **THE STATE vs. CLEM CUMMINGS**

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government.

This cause came on this day for hearing on the Motion of the Defendant to Peremptorily Instruct the Jury to find for the Defendant, and the Court having heard and considered the same is of the opinion that said motion should be overruled;

It is thereupon considered by the Court and so ordered that said motion be and the same is hereby overruled.

### **Verdict**

And afterwards, to-wit: On the 20th day of July, A.D., 1942, the same being a day of the regular July Term 1942, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

**THE STATE vs. CLEM CUMMINGS**

**Distributing Printed Matter to Encourage Disloyalty to the U. S. Government.**

Again came the District Attorney who prosecutes for and on behalf of the State, and again came the defendant in his own proper person, attended by his counsel, and also came a good and lawful jury to-wit: M. L. McElligott and eleven others who were empanelled and sworn to well and truly try the issue joined and a true verdict give, according to the law and the evidence, and after hearing the evidence, arguments of counsel, received the instructions of the Court, retired to consider their verdict, and afterwards returned into open Court the following verdict to-wit:

“We, the Jury, find the Defendant Guilty as charged in the Indictment.”

It is thereupon considered by the Court and so ordered that said defendant be, and he is hereby remanded to await sentence.

**Sentence**

And afterwards, to-wit: On the 22nd day of July, A.D., 1942, the same being a day of the regular July Term, 1942, the following entry was made on the Minutes of the Court on page 225 of Minute Book “A-2”, to-wit:

No. 4280

## STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government.

This cause coming on this day for further hearing, and the said Defendant, Clem Cummings, having been convicted on a former day of this term of Court of the offense charged against him, to-wit: Distributing printed matter to encourage disloyalty to the United States of America, by a Jury of twelve (12) good and lawful men as appears of record in the minutes of this Court at this term on a former day, and the Defendant being brought before the Court in his own proper person and asked if he had anything to say as to why the judgment of the law should not be pronounced against him, said nothing.

It is, therefore, ordered by the Court that the said Defendant Clem Cummings, for such his offense of which he stands convicted, be and he is hereby sentenced to prison in the State Penitentiary for the period or duration of the present war in which the United States of America is engaged, which war is commonly known as World War Number Two, and that said Defendant be so held in prison until said War has in all respects been ended and peace declared by all Nations engaged therein, provided that said imprisonment shall not continue and be in effect for more than a period of Ten (10) years from this date.

It is further ordered by the Court that the said defendant be remanded to the County Jail and there safely kept until called for by the proper authorities.



## **Motion for New Trial**

And afterwards, to-wit: On the 20th day of July A.D. 1942, the same being a day of the regular July Term 1942, the defendant filed his Motion for New Trial, which said motion is in the words and figures as follows, to-wit:

**IN THE CIRCUIT COURT OF  
WARREN COUNTY, MISSISSIPPI  
FOR THE NINTH JUDICIAL DISTRICT  
July Term, 1942**

**No. 4280**

### **MOTION FOR NEW TRIAL**

**STATE OF MISSISSIPPI vs. CLEM CUMMINGS**

Now comes defendant in above styled and numbered cause and moves the Court to grant him a new trial and as grounds therefor says:

#### **O N E**

The Court erred in overruling defendant's motion for continuance.

#### **T W O**

The Court erred in overruling defendant's motion to quash.

#### **T H R E E**

The court erred in overruling defendant's Demurrer.

#### **F O U R**

The Court erred in admitting State's evidence objected to by defendant.

## FIVE

The court erred in overruling defendant's motion for peremptory instruction at the close of the State's evidence.

## SIX

The court erred in sustaining the State's objection to evidence offered by defendant.

## SEVEN

The court erred in overruling defendant's motion for directed verdict.

## EIGHT

The court erred in granting State's instructions No. 1, 2 and 3.

## NINE

The court erred in refusing defendant's instructions No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18.

## TEN

The jury's verdict was contrary to law and evidence. \

WHEREFORE defendant prays that the court set aside the verdict and grant him a new trial.

Clem Cummings  
Defendant

By G. C. Clark  
Attorney for Defendant

ENDORSED & FILED:  
JULY 20, 1942,  
W. J. FOLEY, CLERK.

## **Order Overruling Motion for New Trial**

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term 1942, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

### **STATE vs. CLEM CUMMINGS**

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government

This cause came on this day for hearing upon the Motion for a New Trial filed by the Defendant, and the Court being fully advised in the premises is of the opinion that said Motion for a New Trial should be overruled;

It is thereupon considered by the Court and so ordered that said Motion be and the same is hereby overruled, and said defendant be and he is hereby allowed bail in the penal sum of Twenty-five Hundred (\$2500.00) Dollars, with good and sufficient sureties, duly conditioned according to law.

## **Petition for Appeal**

And afterwards, to-wit: On the 20th day of July, A. D. 1942, the same being a day of the regular July 1942 Term, the Defendant filed his Petition to the Circuit Clerk for an Appeal in Criminal Cases, which said Petition is in the words and figures as follows, to-wit:

**PETITION TO THE CIRCUIT CLERK  
FOR AN APPEAL IN CRIMINAL CASES**

**No. 4280**

**The State of Mississippi vs. Clem Cummings**

**STATE OF MISSISSIPPI, WARREN COUNTY**

**In the Circuit Court of Warren County,  
July Term, 1942,**

**TO The Circuit Clerk of Warren County:**

Your petitioners, the undersigned Clem Cummings, respectfully states that, at the July Term, 1942 of said Court on the 20th day of July, 1942, he was convicted of Violating House Bill 689 of the Regular Legislative Session, 1942, and sentenced to serve in the State Penitentiary for the duration of the war. Feeling aggrieved at this conviction they pray an appeal to the Supreme Court and tenders herewith a good and valid appearance bond, with sureties, as required by law and asks that an appeal be granted.

**Clem Cummings  
Defendant**

**By: G. C. Clark  
Attorney for Defendant**

**ENDORSED & FILED:  
JULY 20, 1942,  
W. J. FOLEY, CLERK.**

Notice to the Court Reporter to  
Prepare Record for Supreme Court

IN THE CIRCUIT COURT OF  
WARREN COUNTY, MISSISSIPPI  
FOR THE NINTH JUDICIAL DISTRICT

The State of Mississippi vs. Clem Cummings,  
*Defendant*

I do hereby hand you this notice to prepare record for Supreme Court from your stenographic notes in the above styled and numbered cause.

The defendant herein mentioned, has petitioned and obtained an appeal in said cause, this the 20 day of July, 1942.

Clem Cummings  
Defendant

By: G. C. Clark  
Attorney for Defendant

ENDORSED & FILED,  
JULY 20, 1942,  
W. J. FOLEY, CLERK

**Transcript of Testimony and Proceedings**

On the 2nd day of September, 1942 there was filed with the Circuit Clerk of Warren County, Mississippi, the official court reporter's transcript of the testimony and proceedings had in the case of the State of Mississippi vs. Clem Cummings, tried at the July term, 1942 of the Circuit Court of Warren County, Mississippi, which is in words and figures as follows:

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS

Appearances:

T. J. Lawrence, District Attorney, J. J. O'Neill, County Attorney, and J. H. Culkin, of Culkin, Laughlin & Thames, present and representing the State.

G. C. Clark, present and representing the defendant.

The following proceedings were had and entered of record:

(A jury acceptable to both sides was secured)

BY MR. LAWRENCE: Gentlemen, I will read the indictment to you.

(Mr. Lawrence here read the indictment to the jury)

BY MR. CLARK: Gentlemen of the jury, you heard the reading of the indictment. The defendant pleads not guilty, and will set up his theory of what his case is—

BY THE COURT (Interposing): Don't state what your case is; it is not permitted in pleading to the indictment. Just plead not guilty.

BY MR. CLARK: All right, your Honor.

Tom Byrd (white), a witness for the State, after being duly sworn testified as follows:

## DIRECT EXAMINATION

### BY MR. LAWRENCE

Q What is your name?

A Tom Byrd.

Q Mr. Byrd, where do you live?

A Vicksburg.

Q How long have you lived in Vicksburg, Warren County, Mississippi?

A Since 1924.

Q What line of work are you engaged in?

A Jailer of Warren County.

Q How long have you served Warren County in the capacity of jailer?

A Since January, 1940.

Q Do you know the defendant on trial, Mr. Cummings?

A Yes sir.

Q Mr. Clem Cummings—do you know him?

A Yes sir.

Q How long have you known Mr. Cummings?

A Since April 11 of this year.

Q Where did you—first, where were you when you first formed your acquaintance with Mr. Clem Cummings?

A In the Warren County jail.

Q Did you see him there for some two or three days?

A Yes sir, something like that. I believe at that time he was in jail four or five days.

Q In what part of the jail was he when you saw him?

A He was brought in the jail by the officers, and I



locked him up downstairs; I didn't take him upstairs.

Q Did he give to you while in jail a book, or any literature of any kind?

A Yes sir.

Q Do you know the name of the book that he gave you?

A I think it is Children.

Q I hand you this book, and ask you to look at it and tell the jury whether or not that is the book that Mr. Clem Cummings gave you? (Hands book to witness)

A Yes sir.

BY MR. CLARK: We object to that book being introduced.

BY THE COURT: Over-ruled.

BY MR. LAWRENCE: I believe you would object to it.

Q Where was Mr. Clem Cummings when he gave you that book?

A He was in his cell, or in a room on the bottom floor; it is not a cell.

BY MR. CLARK: If the witness will read the entire book I will withdraw the objection.

BY THE COURT: The objection is over-ruled.

BY MR. CLARK: A book—as your Honor knows, you can't take excerpts from a book. It is the whole book.

Q Do you see the man in the courtroom that gave you that book?

A Yes sir, Mr. Cummings.

Q Sitting here by Mr. Clark, his attorney?

A Yes sir.

Q Is this the book that the defendant gave you (Indicating book previously mentioned) ?

A Yes sir.

Q I will ask you to please refer to Page 314, and see if you find a page in that book designated 314 ?

A Yes sir.

Q Was that page in the book when Mr. Cummings gave it to you ?

A Yes sir.

Q Has there been any change made in the writing in that book since Mr. Clem Cummings gave you that book ?

A No sir.

Q Is that book now in the original form in which it was when it was delivered to you ?

A It is.

BY MR. LAWRENCE: We will ask that this book be marked as Exhibit A to the testimony of Mr. Tom Byrd.

(The book above referred to was here identified by the court reporter as Exhibit A to the testimony of Mr. Tom Byrd. Exhibit A follows) :

BY THE COURT: You can point out to the jury any part of the book you desire.

BY MR. CLARK: Or all of it ?

BY THE COURT: Yes, the parts of it that you think are relevant to the case. It will be a burden on the jury to read the entire book. You can read part of it, but if you think it will do any good to read it all, you can read the whole thing.

Q Now, Mr. Byrd, why did Mr. Cummings give you this book ?

A I don't know why he gave it to me.

**Q** Tell the Court and jury whether or not he discussed with you, at the time of delivering this book, the saluting of the United States flag?

**BY MR. CLARK:** We object.

**BY THE COURT:** Over-ruled.

**A** I had been talking to Mr. Cummings. I don't think it was right at the time he gave me that book.

**BY MR. CLARK:** We object. They just charged that he distributed printed matter.

**BY THE COURT:** Over-ruled.

**A** (Continuing) He did not at the time he gave me that book, but Mr. Cummings and I had been talking along those lines, and I asked him where he got his authority—

**BY THE COURT** (Interposing): That has nothing to do with it.

**BY MR. LAWRENCE:** I want to read passages of the book. I will read from—taken from the book which was delivered to Mr. Byrd. "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12, 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20; 1, 5). That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a cove-

nant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and the children who insist on obeying the commandments of God. This makes the way of both parents and children more difficult, but at the same time it puts a test upon them and affords them the opportunity to prove their faith and obedience and to maintain their integrity towards God and his King."

BY MR. LAWRENCE: We offer this book as Exhibit A to the testimony of the witness, Mr. Byrd.

(This is the same book that had been previously offered in evidence by the State)

Q Now, Mr. Byrd, did the defendant on trial give you any other literature?

A Yes sir, he gave me a pamphlet called or named The Watchtower.

Q I hand you that, and ask you to observe it, and tell the Court and jury whether or not that is a document delivered to you by the defendant in the Warren County jail?

A Yes sir.

Q I will ask you to refer to Page 39 of this document: was that page in there at the time the defendant delivered it to you?

A Yes sir.

BY MR. LAWRENCE: We offer that as Exhibit B.

(The booklet or pamphlet above mentioned was

here identified by the court reporter as Exhibit B to the testimony of Tom Byrd)

BY MR. CLARK: We object because that wasn't mentioned in the indictment.

BY THE COURT: Is that true, that it wasn't mentioned?

BY MR. CULKIN: It says "Other pamphlets, of a more particular description to the grand jurors unknown."

BY THE COURT: I over-rule the objection.

(Following a conference at the Court's bench Mr. Lawrence withdrew the pamphlet) —

Q Was that book delivered to you by the defendant in the day or night time?

A In the day time.

Q Did you compel him to give it to you?

A No sir. His little boys came on visiting day, on the 14th of April, I believe. They brought some clothes, and there were several of these books in the box, and I delivered them to him, and he gave me this Watchtower to read, and I had been discussing it with him in the jail for sometime.

Q The place that the defendant gave you that book was in what County and State?

A Warren County, State of Mississippi.

BY MR. LAWRENCE: That is all.

## CROSS EXAMINATION

BY MR. CLARK

Q Mr. Byrd, did you read that book?

A I can't say I read all of it.

Q But you did read some of it?

A Some of it. I can't tell you what part I did read.

Q In reading any of it, did it make you have any less respect for your government?

A No sir.

Q Any less respect for your flag?

A No sir.

Q Any less respect for your country?

A No sir.

BY MR. CLARK: That is all.

## REDIRECT EXAMINATION

BY MR. LAWRENCE

Q You read that paragraph that I just read to the jury?

A Yes sir.

Q What influence did it have on you when you read that?

A I don't suppose it had any influence at all.

Q You simply ignored it, did you?

A Sure. It didn't affect me one way or the other.

Q You didn't read the entire book?

A No, I can't say I did; I sketched through it.

Q What impression did you gain by reading the book, relative to the teachings in the book with respect to the flag?

A Of course, I respect the flag. I asked Mr. Cummings where he got his authority for not wanting to salute the flag of this country, and he quoted Exodus 20: 1, 5, and I got the Bible—we were sitting in the office—and I read it and said, "I can't see where that forbids you all to salute the flag," and he said, "Well, we won't have any argument."

- Q And the book he gave you had a tendency to teach you, and did teach you, not to salute the flag of this government?
- A I don't believe it says not to salute the flag, does it?

BY THE COURT: That doesn't matter there.

## RE CROSS EXAMINATION

BY MR. CLARK

- Q In order to get it straight, what it does say, I will read this from it, Page 311, under the sub-head of Childbearing, on Page 311. I will read you from that, and ask if you have read that: "Childbearing". Marriage and childbearing are the means of carrying out the divine mandate to multiply and fill the earth. This mandate was given to righteous man and woman in Eden, and even so the mandate must be carried out by righteous men and women on the earth after Armageddon and who have received righteousness and the right to life from God by Jesus Christ. (Romans 6: 23; John 17: 3) From Eden to Armageddon it was not possible for the divine mandate to be carried out, for the reason that no righteous human creatures appeared on the earth qualified to carry it out. The divine mandate is unto life everlasting to righteous human creatures on the earth. After Armageddon only righteous human creatures will be on the earth. The Devil and all his wicked agents will then be completely disposed of, so that no wicked influence can be exercised over those of the earth. Then the children that are conceived in righteousness and brought forth in righteousness, by righteous parents, will be righteous, and they, being righteous,



in due time will be qualified to participate in carrying out the divine command. It was God's command that righteous Adam and Eve, without any hindrances or limitations such as set forth in the seventh chapter of First Corinthians and at First Timothy 5:11-14, should bring forth children. Clearly the men and women of the great multitude, because of their being righteous and having the right to life, will marry and bring forth children without hindrance. They will occupy and fill the place that no human creature could fill from the time of Eden to the Kingdom.

Should men and women, both of whom are Jondabs or "other sheep" of the Lord, now marry before Armageddon and bring forth children? They may choose to do so, but the admonition or advice of the Scriptures appears to be against it. Being married before Armageddon and both continuing faithful and surviving Armageddon, their marital relationship shall continue and persist after Armageddon. They receive their right to life everlasting after Armageddon, and after receiving that right to life their children then born would be born in righteousness. Children born before Armageddon of parents who had not received the right to life, would not be born with the right to life but would have the privilege of choosing to serve God and Christ and live if they prove their integrity. Otherwise stated, each one must individually choose and individually be tested.

The prophetic picture seems to set forth the correct rule, to-wit: The three sons of Noah and their wives were in the ark and were saved from the flood. They did not have any children, however, until after the flood. They began to have children two years after the flood. (Genesis 11: 10, 11) No chil-

dren were taken into the ark and none were born in the ark, and hence none were brought out of the ark. Only eight persons went in and eight came out of the ark. (1 Peter 3:20; Genesis 8:18) That would appear to indicate it would be proper that those who will form the "great multitude" should wait until after Armageddon to bring children into the world.

It is only a few years from the time the "other sheep" are gathered to the Lord until Armageddon. That entire period is a time of great tribulation, concluding with the greatest tribulation the world will ever have known. Speaking of that very time, Jesus says: "Woe unto them that are with child, and to them that give suck in those days!" —Matthew 24:19, 21.

That would seem to mean that those who would have infants during Armageddon would suffer much greater woe because of their care of the same. It is a great responsibility to rear children and care for them now, and it would be far greater difficulty to care for them during the time of the great tribulation upon the earth.

Jonadabs, or "other sheep" of the Lord, who are now married and have children are blessed with the great opportunity and the obligation to teach their children the Word of God and to show them the necessity of choosing the Lord and taking their stand on the side of The Theocracy and being fully obedient and loyal to the Kingdom. There is but one possible way their children can find protection and blessing, and that is by choosing the Lord and fleeing to the Lord and serving Him. Each one must choose for himself.

Satan knows that his time is short, and therefore he is desperately trying to turn all persons, includ-

ing the children, against God. (Revelation 12: 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and the children who insist on obeying the commandments of God. This makes the way of both parents and children more difficult, but at the same time it puts a test upon them and affords them the opportunity to prove their faith and obedience and to maintain their integrity toward God and his King. Both parents and children who are now consecrated to do the will of God should rejoice in their privilege of bearing the reproaches that fall upon them because of their faithfulness to The Theocracy under Christ. If they remain true and faithful to the Lord amidst such great persecution and opposition they may be fully assured that the Lord will shield and protect them and give them his great blessing through Armageddon and take them over into the new world to serve with joy forever. The Lord never forgets or forsakes those who are faithful to him.

### UNTO LIFE

The divine mandate to multiply and fill the earth was to life of the creature. That mandate to the

"great multitude" is to life of the children they shall bring forth. The parents, then being justified and having the right to live which Adam lost and which Jesus bought for obedient men, will, by the Lord's grace, transmit life and the right to life to their children. There is no Scriptural reason why such child should die as a child. If that child, upon coming to the point of knowing good and evil, and hence to the point of individual, personal responsibility, then continues to obey God, it will live. God's law never changes, and it is written: "The soul that sinneth, it shall die." (Ezekiel 18:4) If a descendant of the "great multitude", after reaching personal responsibility, willfully sins, then he would suffer the penalty, not as a child, but as a grown-up. Righteous parents will bring up their infants in righteousness, and these will receive the blessings of the Lord. Such children will not inherit the result of Adam's sin. There would be no reason to conclude that the child would die as a child. But if as a grown-up person it becomes a willful lawbreaker of The Theocracy it will suffer destruction, from which there is no resurrection. —Jeremiah 31: 29, 30; Hebrews 6: 4-6.

The promise to these of the "great multitude" is that they shall bring forth children, not for trouble and pain, but to have joy. "There shall be no more thence an infant of days, nor an old man that hath not filled his days: for the child shall die an hundred years old: but the sinner, being an hundred years old, shall be accursed. They shall not labour in vain, nor bring forth for trouble; for they are the seed of the blessed of the Lord, and their offspring with them." (Isaiah 65: 20, 23) (This prophecy is considered at length in the book *Salvation*, chapter 7.)

Q (By Mr. Clark) Now, you read that, or did you read that good?

A Yes sir.

Q I would like to ask you then, was there anything said about the United States flag in that?

A No sir, not the United States flag.

Q It just says, in general, flags?

A Yes sir.

Q Is there anything in there that says for you, or the reader, not to salute the flag?

A No sir.

Q Then there is nothing in that passage that made you disrespect or love the flag of your great country any less, did it?

A I don't know; it just didn't affect me one way or the other. I admire our flag.

Q There is nothing said against our flag, is it?

A It speaks for itself, what it says.

BY MR. CLARK: That is all.

## FURTHER REDIRECT EXAMINATION

BY MR. LAWRENCE

Q Mr. Byrd, doesn't this passage, in truth and in fact, teach that it is idolatrous to salute the flag of this country?

A That is what it says. It doesn't say this country.

Q And this book was given to you in Warren County, Mississippi?

A Yes sir.

BY MR. LAWRENCE: That is all.

FURTHER RECROSS EXAMINATION  
BY MR. CLARK

Q This is what it says: "Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men." Doesn't it say that hailing men is just as idolatrous as saluting the flag?

A The book speaks for itself. I didn't memorize that.

Q But it does say this. I will let you look at it. (Hands book to witness) Read there what it does say, right down to there (indicating on book). That is what he is getting at and what I am getting at. Will you read that portion dealing with the flag and idolatrous practices?

A (Reading) "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12: 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men."

Q You read there about children of the Jonadabs: Do you know who the Jonadabs are, if they are Americans or German, or who they are?

A No sir, I don't know them when I see them.

BY MR. CLARK: That is all.

(Witness excused)

George E. Hogaboom (white), a witness for the State, after being duly sworn testified as follows:

## DIRECT EXAMINATION

BY MR. LAWRENCE

Q General, what are your initials?

A George E.

Q Where do you live, General Hogaboom?

A Vicksburg.

Q How long have you lived in Vicksburg?

A About thirty five years.

Q Are you connected with the City of Vicksburg in any capacity?

A Chief of Police.

Q How long have you served as Chief of Police of Vicksburg?

A About five years.

Q Before your association with the City of Vicksburg, were you connected with the United States Army?

A With the National Guard.

Q How long were you with the National Guard?

A Ever since 1898.

Q Were you an officer in the United States Army during the World War?

A Yes sir.

Q And saw service overseas?

A Yes sir.

Q Do you know the defendant, Clem Cummings?

A Yes sir.

Q Where did you first see him?

A In the City Hall.

Q Could you tell us approximately the date?

A Well, it has been a couple of months ago I guess.



- Q General, was it in the morning or in the evening?  
A I just don't remember.  
Q Do you know whether or not the United States flag was within the courtroom of the City Hall of Vicksburg when the defendant was there?

BY MR. CLARK: We object to that. The question of the United States flag has nothing to do with this man's attitude.

BY THE COURT: I don't know if it has or not.

- Q Was there a flag in the City Hall at the time the defendant was present?  
A Yes sir.  
Q Did the defendant, Clem Cummings, refuse to salute—

BY MR. CLARK (Interposing): We object to that; it has nothing to do with the case.

BY THE COURT: He has not finished the question.

- Q Did the defendant, Clem Cummings, in the City Hall on the occasion you saw him when the flag was present, did he or not stubbornly refuse to salute the flag in the City Hall on that occasion?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained. It is not charged in the indictment. It is not an offense for a man to refuse to salute the flag. He is charged here before the Court for teaching and distributing this literature.

- Q Did he make any statement relative to saluting the flag in the City Hall?

BY MR. CLARK: We object to that.

BY THE COURT: Take the jury out.

(The jury here retired from the courtroom)

Q General, had the defendant been taken into custody when he was at the City Hall?

A Yes sir.

Q Tell the Court just what he did.

A A flag was on display in the courtroom, and I requested all present to rise and salute the flag, which they failed and refused to do, and stated that it was idolatry; they were taught that.

BY THE COURT: Refusal to salute the flag doesn't come under this statute.

BY MR. CULKIN: When he said it was idolatry to do so?

BY THE COURT: That might throw light on it.

BY MR. CLARK: General Hogaboom, is it your custom on all occasions to have a flag in the room, and to be saluted at other times?

A No sir.

Q It was just this occasion?

A Yes sir.

BY THE COURT: What was your purpose? Was it because it was war time?

BY THE WITNESS: No, it was in the nature of evidence to the court.

BY MR. CLARK: Did you tell him that if he didn't answer, or if he did, that it might be used against him?

A No.

Q Was he in your custody at that time?

A Yes sir.

BY THE COURT: Bring the jury back.  
(The jury here returned to the courtroom)

Q (By Mr. Lawrence, resuming direct examination): General, I believe you stated to the Court and jury that you first knew the defendant, Clem Cummings, down in the City Hall?

A Yes sir.

Q Were there any other persons in the City Hall at the time?

A Yes sir, the courtroom was full.

Q Were there white and colored people in the courtroom?

A Yes sir.

Q Now, the defendant—was he handcuffed at the time?

A No sir.

Q He was just there in the custody of the court?

A That is right.

Q There were some others there?

A That is right.

Q Now, General, did you have a flag there in the courtroom?

A Yes sir.

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

A (Continuing) Yes sir, it is there now.

BY THE COURT: I hold that his refusal to salute the flag is not competent evidence, but what he said there that would tend to show disrespect to the flag.

Q State whether or not the defendant, Clem Cum-

mings, made any remark relative to saluting the flag in the courtroom on that occasion?

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

A He said it would be idolatrous to do that and that it was contrary to their teaching.

Q General, I am going to ask you to please refer to that book (indicating Exhibit A to the testimony of Tom Byrd), and see what you gather from it, beginning on Page 314, beginning with "Satan."

A (Reading) "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12: 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs—(Interposing) From your reading there, and from your observation, state whether or not in your opinion this book teaches that saluting the flag—

BY MR. CLARK (Interposing) We object to that.

BY THE COURT: Sustained.

Q What does it teach?

BY MR. CLARK: We object.

BY THE COURT: Sustained.

BY MR. LAWRENCE: That is all.

### CROSS EXAMINATION

BY MR. CLARK

Q General, when Mr. Cummings, the defendant, made the statement that you referred to, about it was idolatry to salute the flag, in court there, did he make that in the presence of all of the people, or just to you upon your request?

A My recollection is that it was in the courtroom, but I could be wrong about that, but that is my recollection.

Q Since you read that paragraph did it make you think any less of your country?

A No.

BY MR. CLARK: That is all.

### REDIRECT EXAMINATION

BY MR. LAWRENCE

Q Such stuff as that wouldn't influence you in any respect, would it?

A No.

BY MR. LAWRENCE: That is all.

### RECROSS EXAMINATION

BY MR. CLARK

Q It wouldn't influence any body who had good, com-

mon horse sense, would it ?

A Well, I wouldn't say that.

BY MR. CLARK: That is all.

(Witness excused)

N. H. Hullum (white), a witness for the State, after being duly sworn testified as follows:

### DIRECT EXAMINATION

BY MR. LAWRENCE

Q You are Captain Hullum ?

A Yes sir.

Q You are employed by the City of Vicksburg ?

A Yes sir.

Q In what capacity ?

A Captain of Police.

Q How long have you been with the Police Department of this city ?

A About twenty two years.

Q Do you know Mr. Clem Cummings on trial ?

A Yes sir.

Q Did you see him at the City Hall some few months ago ?

A Yes sir.

Q You were present ?

A Yes sir.

Q Any other persons present on that occasion ?

A On the occasion when we had him in court there !

Q Yes.

A Yes sir, there was quite a few present. The court-room was pretty well filled, with some white and some negroes.

Q Any grown men in the court room ?

A Yes sir.

Q Any children in the courtroom?

A I don't remember any children right now.

Q Were there any women in the courtroom?

A Yes sir.

Q Were you present when the defendant was on trial in the city court?

A Yes sir.

Q Did he make a statement relative—did he make any statement at all in regard to the flag of his country, in the courtroom?

BY MR. CLARK: We object to that as not being relevant to this matter.

BY THE COURT: Over-ruled.

Q Did he make any statement relative to teaching, or saluting the flag, or not saluting the flag?

A Yes sir, he said he would not salute the flag, that they were taught not to salute it.

Q Did he teach others not to salute the flag in the courtroom?

A Yes sir.

Q Now, Captain, the defendant was on trial in the City Court when he made that statement?

A Yes sir.

Q Was he remanded to jail to await the action of the Grand Jury from that Court?

A Yes sir.

Q Do you know how long he remained in the Warren County jail before bond was made?

A I can't say. I know he was up here some time.

Q Do you know whether or not it was in the month of May, 1942?

A Yes sir.

Q April or May, 1942?



A Yes sir. I wouldn't say what date but it was along about that time; I haven't got the date with me.

Q Did he speak out there in the courtroom and make that statement publicly?

A Yes sir.

Q Was he brought from the City Hall to the Warren County jail?

A Yes sir.

Q Who is the County jailer here?

A Mr. Tom Byrd and Mr. Joe Barnes, Mr. Byrd was day jailer and Mr. Barnes was night jailer.

BY MR. LAWRENCE: That is all.

## CROSS EXAMINATION

BY MR. CLARK

Q Captain Hullum, did you keep any record or have any made of what took place there that day? That is not a court of record, is it?

A There is a court record on it. I didn't keep any record myself.

Q Will you please state again what he said there in regard to saluting the flag—the exact words he said there?

A He was asked to salute the flag, and he said he was taught not to salute the flag, and he was asked by Mr. Lawrence if he was taught that, and he said he—"We were taught that."

Q He—did he say "they" or "we"?

A We.

Q Did he say anything about it being an idolatrous practice?

A I don't know what his words were, but he said they were taught not to kneel to any image, and Mr.

Lawrence said he was not asked to kneel. He was asked if he would tip his hat to a lady and he said he would, but he would not kneel.

Q That is what you heard him say there?

A That was just about his words, as near as I can repeat them.

Q Were you present while Mr. Lawrence was prosecuting the case?

A Yes sir.

Q And is that when you heard Mr. Cummings say what you say he said?

A Yes sir, while he was in court.

Q Did what he said there have any effect, or did you conclude that his statement in regard to the flag would have any adverse effect on your mind or lessen your respect for the flag in any way?

A No sir.

Q Or cause any disrespect to the flag or any disrespect for the Government: did that seem to be his purpose?

A I can't tell what he did it for.

Q He said it was due to his religious teaching?

A Yes sir.

BY MR. CLARK: That is all.

## REDIRECT EXAMINATION

BY MR. LAWRENCE

Q That was out in the courtroom, among the colored and white people, when he made that statement?

A Yes sir.

Q Did he demand a copy of the charge in the case?

A Yes sir.

Q And he said, "We are teaching not to salute the

flag, and we refuse to salute it”?

A That is what he said, that he refused to salute it.

Q State whether or not he taught it before other people in the courtroom, not to salute the flag of his country?

A He refused to salute it. It must—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: That is ruled out, that he refused to salute the flag.

Q But he did say that “We refuse to salute the flag”?

A Yes sir.

Q State whether or not I asked him if he would salute the flag of this country, and whether or not he said he would teach people not to salute the flag?

BY MR. CLARK: We object to that.

BY THE COURT: You are putting the words in his mouth. Besides, it is coupled with matters that have already been ruled out.

BY MR. LAWRENCE: That is all.

## FURTHER RECROSS EXAMINATION

BY MR. CLARK

Q But he did say it was due to—he gave you a vital reason for it?

A Yes sir, he said they were taught not to salute the flag, and did teach not to salute the American flag.

BY MR. CLARK: That is all.

## FURTHER REDIRECT EXAMINATION

BY MR. LAWRENCE

Q Did he show you any Scripture in the courtroom not to salute the flag?

A No sir.

Q But he stated at the desk, and told you and taught you not to salute the flag, did he not?

A Yes sir.

BY MR. LAWRENCE: That is all.

## FURTHER RECROSS EXAMINATION

BY MR. CLARK

Q That was in reply to some of your questions as to why he didn't salute the flag? The Court did question him, or the District Attorney did question him?

A I don't quite catch your question.

BY MR. CLARK: I withdraw it, your Honor.

BY MR. LAWRENCE: The State rests.

(At the request of Mr. Clark the jury was here taken from the courtroom)

(Mr. Clark here presented to the Court the following motion for a peremptory instruction in favor of the defendant, asking the court reporter to copy it in its entirety in the record):

**MOTION FOR PEREMPTORY INSTRUCTION**  
**IN THE CIRCUIT COURT OF**  
**WARREN COUNTY, MISSISSIPPI**  
**9 JUDICIAL DISTRICT**

No. 4280

The State of Mississippi v. Clem Cummings,  
*Defendant(s)*

Now come the above named defendants in the above entitled and numbered cause and file this their **MOTION FOR PEREMPTORY INSTRUCTION** at the close of the State's evidence and before the defendants offer any evidence, and as grounds for this motion say:

**ONE**

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 to the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

**TWO**

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Sec-

tion 1 thereof deprives these defendants of their inherent rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

### T H R E E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### F O U R

The statute under which the indictment is drawn, known as House Bili 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### F I V E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police pow-

er of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

## SIX

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

## SEVEN

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undisputable evidence shows that the defendants are not guilty of violating any law of the State of Mississippi, and are not guilty of the act charged in the indictment.

WHEREFORE the defendants pray that the Court sustain this motion for peremptory instruction, exclude all the evidence offered by the State and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty", and render a judgment dismissing the indictment and discharging the defendants with their costs, and defendants pray for such other and further relief as they may show themselves justly entitled to.

*SIGNED* G. C. Clark

Grover C. Powell

Hayden C. Covington

*Attorneys for Defendants*



BY THE COURT: I over-rule the motion.  
(The jury here returned to the courtroom)

Mrs. Clem Cummings (white), a witness for the defendant, after being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. CLARK

Q Your name is Mrs. Clem Cummings?

A Yes sir.

Q Were you down at the trial the day that Mr. Clem Cummings, your husband, was tried in the Police Court?

A Yes sir.

Q Will you tell whether or not he told the crowd there that he taught—he or we taught—the people not to salute the flag?

A He did not.

Q He didn't tell that?

A No sir.

Q Was the flag question discussed out in the open there that day? Did Mr. Lawrence ask him anything about the flag, as prosecutor? Did he ask him whether or not he taught people not to salute the flag, or do you recall?

A I don't recall whether he did or not.

BY MR. CLARK: That is all.

CROSS EXAMINATION

BY MR. CULKIN

Q You are Mrs. Clem Cummings, are you not?

A Yes sir.

Q You are a working missionary in connection with the activities of the Jehovah's witnesses, are you not?

A Yes sir.

Q You go from house to house, in Vicksburg and other places, in connection with your work, and play graphophone records, do you not?

A Yes sir.

Q This graphophone takes the message that you are teaching to the people of the State, does it not?

A It is what I preach.

Q It is likewise what your husband preaches, by graphophone records and by books, *does* it not?

A Yes sir.

Q And you distribute the information contained in The Watchtower, do you not?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q The same teachings which are presented by you are presented by your husband and other members of the organization?

BY MR. CLARK: We object to that. That would be an opinion.

BY THE COURT: Over-ruled.

Q In other words, you go out and teach that which is in this book, and in graphophone records, and in The Watchtower, and in Consolation; that is, other books?

A We repeat that to the people; it is all the Bible.

Q Explain what you mean when you preach to the people words which are contained in The Watchtower and other books, words of the following—

BY MR. CLARK (Interposing): We object to that. She is not on trial.

BY THE COURT: What is in The Watchtower is not admissible in evidence.

Q Do you or do you not teach that The American Legion is an organization—

BY MR. CLARK (Interposing): We object to what she teaches.

BY THE COURT: Let him finish the question.

BY MR. CULKIN: She says what she teaches is what her husband teaches. It is one and the same thing.

BY THE COURT: Ask the question.

Q In your teaching do you present to the public that it is idolatrous and wrong to salute the flag?

A I do not.

BY MR. CLARK: I do not.

Q You do distribute this book, do you not? (Indicates Exhibit A to testimony of Tom Byrd)

A Yes sir.

Q You had this book on last Thursday week, on Washington Street, and played a graphophone record, and tried to sell this book?

A I asked for a contribution.

Q What does it mean by saying in this book that they are trying to compel children to indulge in idolatrous practices, by bowing down to some image or thing, such as saluting flags and hailing men? Tell the jury what that means? /

A It means just what it says there.

Q Explain what it means—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: I sustain the objection. I don't believe she should be required to give their interpretation of what it means; the jury can do that.

Q What do you mean by Jonadab?

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

Q About whom are you talking when you talk about Jonadabs?

A The Lord, in the Bible, made a picture, and He used Jonadab as one who was taking a stand on the Lord's side, and he was asked if he was with Christ, and Jonadab said Yes.

Q In other words, the name Jonadab refers to a Biblical quotation wherein it listed certain people on the side of the Lord?

A Yes sir.

Q All of those who are not Jonadabs are not on the side of the Lord, according to these teachings?

A Not necessarily.

Q Those who are not Jonadabs are not on the side of the Lord, are they?

A It is not for me to say that.

Q I will ask what your book means, which your husband distributes, on Page 311, where it says Child-bearing, where it says those that are born before Armageddon would not be born with the right to life and therefore could not be saved.

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q What do you mean by Armageddon?

A It means the battle of God Almighty which will soon be fought.

Q You refer to the Armageddon that the Bible talks about, in which those who are against God are lined up on one side?

A Yes sir.

Q And you say those who are not Jonadabs are not on God's side?

A Everybody on God's earth has a chance to be on God's side?

Q Do you believe it is against the teachings of God to salute the American or any other flag?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q Do you and your husband teach what is on this particular Graphophone record? (Refers to phonograph and record)

A Yes sir.

Q In truth and in fact, this is the same kind of record that has been brought in my office and other offices, and we have been asked to listen to it?

A No doubt it is.

(Mr. Culkin here started to operate the phonograph)

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q I believe you have testified that your husband and you, and other members of your organization, carry this book entitled Children, and deliver it for compensation or otherwise: is that true?

A Yes sir.

Q If there is no contribution there is no delivery?

A I can't say that.

Q Is this a book written by the organization, of which you and your husband are representatives, to teach people what is in this book and other books of similar type; is it gotten out by your organization?

A Yes sir.

## REDIRECT EXAMINATION

### BY MR. CLARK

Q In order to explain a little better about that book, I will ask you to read where the District Attorney read.

A (Reads) "The divine mandate to multiply and fill the earth was to life of the creature. That mandate to the "great multitude" is to life of the children they shall bring forth. The parents, then being justified, and having the right to life which Adam lost and which Jesus bought for obedient men, will, by the Lord's grace, transmit life and the right to life to their children. There is no Scriptural reason why such child should ever die as a child. If that child, upon coming to the point of knowing good and evil, and hence to the point of individual, personal responsibility, then continues to obey God, it will live. God's law never changes, and it is written: "The soul that sinneth, it shall die." (Ezekiel 18:4) If a descendant of the "great multitude", after reaching personal responsibility, willfully sins, then he would suffer the penalty, not as a child, but as a grownup. Righteous parents will bring up their infants in righteousness, and these will receive the blessings of the Lord. Such children will not in-

herit the result of Adam's sin. There would be no reason to conclude that the child would die as a child. But if as a grownup person it becomes a willful lawbreaker of The Theocracy it will suffer destruction, from which there is no resurrection.—Jeremiah 31: 29, 30; Hebrews 6: 4-6.

The promise to those of the "great multitude" is that they shall bring forth children, not for trouble and pain, but to have joy. "There shall be no more thence an infant of days, nor an old man that hath not filled his days: for the child shall die an hundred years old; but the sinner, being an hundred years old, shall be accursed. They shall not labour in vain, nor bring forth for trouble: for they are the seed of the blessed of the Lord, and their offspring with them."—Isaiah 65: 20, 23.

Q Do your people teach that it is wrong to salute the flag?

A Absolutely not.

BY MR. CLARK: That is all.

## FURTHER CROSS EXAMINATION

BY MR. CULKIN

Q Tell the jury what, if anything, you meant by way of the direct statement in the City Hall as to whether or not what you taught—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: Over-ruled.

Q Just tell the jury what you said in your statement pertaining to the idolatrous act of saluting the flag in the City Hall?



A I said I was consecrated to do the will of Almighty God and obey all the commandments in the Bible. "Thou shalt have none other gods before me. Thou shalt not make unto thee any graven image or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the waters under the earth. Thou shalt not bow down thyself unto them, nor serve them; for I, the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children of the third and fourth generation of them that hate me."

Q And you told them that "I not only believe that, but we teach others that that should be followed," didn't you?

A Yes sir.

Q You are not only familiar with that particular part of the word of God that says, "Thou shalt have no strange gods before me," but you know that that happened in Bible history, do you?

A Yes, it happened back in the days of the Israelites, God's typical people on earth.

Q Will you tell the jury the particular time and conditions under which it happened?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained. That is testing her knowledge of Bible history.

A Is it true that when that utterance was made in Exodus, as narrated in the Biblical interpretation that you have outlined, that the Israelites were dancing around the golden calf, and Moses threw down the tablets? Is that true?

BY MR. CLARK: We object. That has nothing to do with it.

BY THE COURT: No.

Q How long have you been in Mississippi?

A Since the 31st of December, 1941.

Q You and your husband jointly teach the particular beliefs that are outlined in Children, and other books, do you not? You teach the same particular type, character and kind of belief to these people with whom you come in contact, do you not?

BY MR. CLARK: We object to that as her opinion of what her husband teaches.

A I leave the literature with the people, that they might look it up in the Bible.

Q You teach white and colored people alike, do you?

A No.

Q You have a number of colored people who sell these books, do you?

A We do.

Q You direct their efforts and direct their teachings, do you?

A They have colored people to do that.

Q You train them, do you?

A We don't take the literature to colored people.

Q But the colored people do it under your direction, do they? We are talking about saluting the flag, and you don't believe in saluting it, do you?

BY MR. CLARK: We object to that.

BY THE COURT: That has been gone over.

Q You stated you didn't believe in saluting the flag, the American flag or any other?

BY MR. CLARK: We object.

BY THE COURT: Over-ruled.

Q You have quoted Scripture—

A (Interposing) I answered it awhile ago; I gave Exodus 20: 3.

Q For that reason you don't salute the flag?

BY MR. CLARK: We object to it.

BY THE COURT: Over-ruled.

Q And for that reason you teach others not to salute the flag; is that true?

A No.

Q Did you tear that page out of your book, 314, about officials teaching children and others not to salute the flag? Did you tear it out of there?

A No, it was no purpose in tearing it out.

Q What publishing house sends all these things out through the mail, and otherwise?

A The Watchtower Bible & Tract Society, Inc.

Q When these books are sent out, are they sent through the mail?

A Yes sir.

Q They are distributed by you people after they come through the United States mail?

A Yes sir.

Q Where are you from?

A Urbana, Illinois.

Q Your husband was formerly connected with a railroad?

A Yes sir.

Q You and your husband and your two sons have been standing on Washington Street selling these books, have you not?

BY MR. CLARK: We object.

BY THE COURT: Over-ruled.

Q You and your husband and two children have been standing on Washington Street, on Saturday and other days, selling these particular books, have you not?

A We have.

Q You have also stood on the corner of Washington and Crawford Street and have delivered sermons and lectures relative to bowing down to graven images, have you not?

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

Q Do you know where Washington and Crawford Street is, where they have a clock on the corner?

A Yes.

Q And on the second Saturday in May, when there were some people standing there, and your oldest boy was making a talk, and you were distributing books; do you remember that? You remember when your oldest boy was preaching a sermon?

A No, I didn't see him.

Q And you were giving out books at the Boston Shoe Store?

A I was on the street but I didn't see what my boy was doing; I was busy doing what I was doing.

Q You know he makes talks on the street, do you?

A No sir.

Q You mean you haven't seen him on the street when you were walking by with these books, when he was making a talk in a very loud voice?

A I didn't see him.

Q But you were distributing books?

A I was half a block or a block down from him.

Q You were standing in front of Warner & Searles:

you know where that is, do you?

A Yes sir.

Q But before that you were up in the next block, were you?

A Yes sir.

Q But he was talking, and you don't know what he said, do you?

A I didn't hear him talking.

Q You saw him standing there, did you?

A I knew he was on the street.

Q In truth and in fact, he went out on the street for the particular purpose of making a talk to the public, didn't he?

A No, for placing the literature.

Q Have you ever heard either your husband or your sons make a talk on the subject here?

A No sir.

Q When they have services, do you attend?

A I do.

Q And you have people come in from different places, and you talk about these books, and about Jona-dabs, and about idolatry and saluting flags, and you don't hear him when he talks?

A I hear him in our meetings. We read the book and study it.

Q And make talks?

A No sir, we just study, and look up the Scripture. No one has ever made a talk at any of our meetings.

Q No one has ever made a talk on the street?

A No one that I know of. I never did.

Q How old is your oldest son?

A Twenty.

Q Is it not true in your teachings, and in the teachings of your husband, that you are against anyone enlisting in the military service of—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: That is not in the indictment. I sustain the indictment.

BY MR. CULKIN: That is all.

(Witness excused)

Clem Cummings (white), the defendant in the case, after being duly sworn testified as follows:

### DIRECT EXAMINATION

BY MR. CLARK

Q Is this Mr. Clem Cummings, the defendant?

A Yes sir.

Q Mr. Cummings, you are charged with distributing this book, and that it was calculated and designed to teach disloyalty to the United States and the laws of the State of Mississippi, and a stubborn refusal to salute the flag. Is that the design of that book?

A No sir.

Q Read under the head of Authenticity of the Scriptures, beginning on Page 28, and we want to get enough in here to show the jury that the design of this book was not to teach disloyalty.

A (Reading from Exhibit A to the testimony of Tom Byrd)

"Authenticity.

What is the proof that the Bible contains the authentic record of God's word? The evidence, which furnishes the conclusive proof, is both circumstantial and direct, and the two kinds of evi-

dence fully corroborate each other. Here the evidence circumstantial and that which is direct will be considered together and will be found to fully establish the authenticity of the Bible as God's Word.

"The Bible" is the name given to what is written in the sixty-six books bound together and forming one book. It has in reality only one Author, who is God, and its one great purpose is to furnish a guide to man who desires to walk in the way of righteousness and live and to honor his Maker. The "canon" of the Scriptures is the collection or catalogue of the books or writings into one volume, **THE BOOK**, which sacred writings God has provided; and which is called "The Holy Bible". Such contains the true rule and guide for faithful men. Other writings for which claim has been made as to their genuineness, but which are spurious, are called "The Apocrypha".

The word "canon", from the classic Greek, means "a straight rod or rule". It is a measuring rod. As to the Bible, it means the rule of truth. Concerning this sacred rule the inspired apostle wrote: "And as many as walk according to this rule, peace be on them, and mercy, and upon the Israel of God." (Galatians 6:16; see also 2 Corinthians 10:13-16) Without any doubt the spirit of Almighty God directed faithful men to arrange the canon of the Scriptures according to his will. That much could not be said of any other book in existence. All the evidence, when considered together, proves beyond all doubt that the Author of the Holy Scriptures set out in the Bible is Almighty God, whose name is Jehovah, and which name means his purpose toward his creatures.

Moses, as a servant and an amanuensis of God,



wrote the five books that appear first in order in the Bible. Moses was selected by Jehovah God as his servant to lead the Israelites out of Egypt. At Mount Sinai God took Moses up into the mountain and there dictated to him the fundamental law, which law was written on stone, and which has been translated and recorded in the Bible.

The Scriptures disclose that God invites man to reason with him (Isaiah 1:18); and the fact that the Creator endowed man with faculties of reason shows that it is proper that man reach a conclusion by process of reasoning in harmony with facts and authority which cannot be disputed. Moses was a learned man, "learned in all the wisdom of the Egyptians." (Acts 7:22) Moses records the fact that God spoke to him and directed him to go into Egypt, saying: "Thus shalt thou say unto the children of Israel, I AM hath sent me unto you." (Exodus 3:14) "I AM" means the Everlasting One, not the One who was, nor the One who will be, but The One Who Is. The great I AM made known to Moses his name Jehovah, and this was the first time his name was thus revealed.—Exodus 6:2, 3.

The general history of the human kind could well have been known to ~~Moses~~ even before God revealed His great truth to Moses and before Moses was selected to go to Egypt, because of the following circumstances and facts, to wit: Adam was the original man, from whom the race sprang. Adam lived 930 years, and lived 300 years of that time after the birth of Enoch, a man whom God approved. Enoch was the father of Methuselah, who lived 969 years. Noah was the third generation from Enoch. He was a grandson of Methuselah and must have received much information from his grandfather. (Genesis 5:3-32) Noah was 600 years

old when the flood came. (Genesis 7:6) Being devoted to Almighty God, he would certainly gather all the information he could from his forefathers, and hence would have a very accurate account of the race from Adam to Noah's day. That information he would transmit to his sons.

Noah and his sons came out of the ark together, and Noah lived 350 years thereafter. (Genesis 9:28, 29) His son Shem lived 502 years after the flood. (Genesis 11:10, 11) Two years after Noah's death Abraham was born and therefore Shem and Abraham were on the earth together for a period of 150 years. It is reasonable that Abraham would learn from Shem the facts concerning the human race which Shem had received from his forefathers. Abraham bore the title of 'father of the faithful'; and since knowledge is necessary to faith, Abraham must have had as the basis of faith the necessary knowledge from the creation of man until his day.

Isaac was the beloved son of Abraham and would no doubt receive faithful instruction from his faithful father. The favorite son of Isaac was Jacob. (Genesis 28:5-14) Jacob had twelve sons, and he bestowed his greatest affection upon Joseph, evidently by the Lord's direction. Joseph was a man of great importance in Egypt and would be widely known by almost all of the people of Egypt, and particularly by the Israelites who resided there. Only a few years after the death of Joseph Moses was born. When Moses became a man he devoted himself entirely to the Almighty God. It is only reasonable that Moses was thoroughly familiar with the history of his forefathers from the time of Adam to his own time, when God called him

to be the deliverer of the Israelites. From the human viewpoint, as shown by the facts and circumstances, Moses was amply qualified to write the history of mankind from the beginning until his own day. Intelligent men have a natural tendency to keep a record of facts and events, and it is but reasonable that Moses had a fund of information duly set down to be passed on to other generations. So much from the human viewpoint.

None of the testimony mentioned here will be accepted by evolutionists or higher critics who have no faith in God. "The fool hath said in his heart, There is no God." (Psalm 14:1) A person does not need to say in words, "There is no God"; but by his own conduct or course of action he discloses his secret thoughts. All visible creation testifies to the indisputable fact that there is a Supreme One who is the Creator, the Almighty God.

The miraculous birth of Jesus, his teachings, his crucifixion and his resurrection out of death are supported by a multitude of witnesses, all of which establish the fact that Jesus was not an ordinary man, but the Son of Almighty God. A host of heavenly angels bore testimony at the time of the birth of the babe Jesus that he is "Christ the Lord".— Luke 2: 9-14.

The circumstantial evidence of the miraculous birth of Jesus, and the direct testimony delivered by the man Christ Jesus during the three and more years of his ministry, establishes the authenticity of the Holy Scriptures, or Bible, as the Word of Almighty God. After his resurrection by the power of Almighty God, Christ Jesus appeared to his faithful disciples, at which time he confirmed the words which he had spoken to them before his death. At the same time he testified as to the authen-

ticity of what is written in the law and in the prophecies and in the songs which we call "Psalms". It was then he said: "These are the words which I spake unto you, while I was yet with you, that all things must be fulfilled, which were written in the law of Moses, and in the prophets, and in the psalms, concerning me."—Luke 24: 44.

After his ascension into heaven the Lord gave to John, his faithful servant, a revelation of the things that must come to pass: "The Revelation of Jesus Christ, which God gave unto him, to shew unto his servants things which must shortly come to pass; and he sent and signified it by his angel unto his servant John."—Revelation 1: 1.

Jesus Christ is "The Faithful and True Witness". (Revelation 1: 5; 3: 14) The testimony of Christ Jesus, therefore, imports absolute verity. Jehovah, the Almighty God, sent his Beloved, Jesus, to the earth to tell the truth, and he told the truth. When standing before the Roman governor, charged with treason, Jesus testified, to wit: "To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Everyone that is of the truth heareth my voice."—John 18: 37.

The testimony of Jesus when he was a man on earth is further proof that the Pentateuch, or the first five books of the Bible, were written by Moses at the dictation of Almighty God. (Malachi 4: 4; Matthew 8: 4; Mark 1: 44; 7: 10; 12: 26; Luke 5: 14; John 3: 14; 7: 19, 22, 23) After his resurrection out of death, and when Jesus appeared unto his faithful disciples, his testimony to them fully confirmed what he had told them when he was with his disciples: "And beginning at Moses, and all the prophets, he expounded unto them in all the scrip-

tures the things concerning himself."—Luke 24:27.

Not only was Moses the servant of Jehovah and used by Jehovah to write the five books first appearing in the Bible, but he was a prophet of Almighty God and foreshadowed Christ Jesus, the great Prophet. The testimony of Jesus confirms this statement when we note that he said: "Moses . . . wrote of me." The religious leaders amongst the Jews were opposed to Jesus and, addressing them, he said: "Do not think that I will accuse you to the Father; there is one that accuseth you, even Moses, in whom ye trust. For had ye believed Moses, ye would have believed me: for he wrote of me."—John 5:45, 46.

Not only did he say that Moses had written a portion of the Bible and had written of Christ Jesus, but furthermore he testified: "Search the scriptures; for in them ye think ye have eternal life; and they are they which testify of me."—John 5:39.

Moses was a type of Christ Jesus, the great Prophet; which the evidence completely establishes. Addressing his words to the Israelites, the covenant people of God, Moses uttered this prophecy: "The Lord thy God will raise up unto thee a Prophet from the midst of thee, of thy brethren, like unto me; unto him ye shall hearken." (Deuteronomy 18:15) That prophecy is fulfilled in Christ Jesus: "For Moses truly said unto the fathers, A Prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things, whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people."—Acts 3:22, 23.

Christ Jesus is that great Prophet, who speaks

with full authority conferred upon him by his Father, the Almighty God, Jehovah. Repeatedly the testimony given by Jesus shows that his Father, the Almighty God, sent Jesus to the earth and that the testimony of Jesus is in exact accord with the will of his Father. (John 6: 38, 39) To his learned critics Jesus said: "My doctrine is not mine, but his that sent me." (John 7: 16) Jesus always testified to the truth as he was directed by Jehovah.—John 8: 28, 29, 42.

The holy spirit, which is the invisible power of almighty God, moved upon faithful men of old to write what is set forth in the prophecies and which is there written according to the will of Almighty God. This is a guarantee that the prophecies are true. The testimony of Jesus confirms the authenticity of the prophecies. Both the acts and the words of Jesus refer specifically to the prophets; which proves that the prophecies written in times of old, as set out in the Bible, are true. Note some of the things which Jesus did in confirming the words of the prophets recorded in ancient times. (Matthew 4: 13-16) Early in his earthly ministry he read from the prophecy of Isaiah 61: 1, 2, to wit: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn. (Isaiah 61: 1, 2) "The spirit of the Lord is upon me to preach the gospel to the poor; he hath sent me to heal the brokenhearted, to preach deliverance to the captives, and recovering of sight to the blind, to set at liberty them that are

bruised, to preach the acceptable year of the Lord." "And he began to say unto them, This day is this scripture fulfilled in your ears." (Luke 4: 18, 19, 21) Thus he proved the authenticity of Isaiah's prophecy.

Jesus in fulfillment of a certain portion of Isaiah's prophecy healed the sick: "That it might be fulfilled which was spoken by Esaias the prophet, saying, Himself took our infirmities, and bare our sicknesses." (Matthew 8: 17) Thus he directly applies this prophecy to himself. He repeated the words of the prophet Malachi and applied the same to himself: "For this is he of whom it is written, Behold, I send my messenger before thy face, which shall prepare thy way before thee." (Malachi 3: 1; Matthew 11: 10) He repeated the prophecy written at Isaiah 42: 1-3 and applied the same to himself. (Matthew 12: 17-21) From the prophecy of Jonah Jesus quoted, fully testifying to the authenticity of that prophecy. (Matthew 12: 39-41) He referred to the prophecy concerning Solomon and the queen of the south and then said: "Behold, a greater than Solomon is here." (Matthew 12: 42) Jesus spoke in parables, "that it might be fulfilled which was spoken by the prophet." At Psalm 78: 2: "I will open my mouth in a parable; I will utter dark sayings of old."—Matthew 13: 31-39.

At Matthew 21: 4, 5 Jesus quoted with approval other prophecies: Zechariah 9: 9 and Isaiah 62: 11. Jesus cited with approval the prophecy of Daniel 9: 27 and Daniel 11: 31. (See Matthew 24: 15.) At the same time he spoke of the conditions in the earth that prevailed in the day of Noah, and told his hearers that a similar state of affairs would again obtain upon earth in "the last days", thus proving the authenticity of the prophecy of Noah



and prophesying of "the time of the end". (Matthew 24:37-39; see also Matthew 27:9-35) Jesus testified as to the authenticity of the law and of all the holy prophets (Matthew 11:13), and stated that upon these the two great commandments of God are based. (Matthew 22:36-40) Having testified to the authenticity of the law and of the prophets, which are set forth in the Holy Scriptures, and having stated that he received these truths from the Almighty God, his Father, Jesus summed up the matter in these authoritative words: "Thy word is truth."—John 17:17.

For more than three years the twelve apostles of Jesus were personally taught by him. God gave him those apostles, and all but one of them remained faithful. (John 17:6-10) The testimony is abundant that at Pentecost the faithful apostles received the outpouring of the holy spirit of God in fulfillment of the prophecy uttered by Joel. (Joel 2:28; Acts 2:1-21) Inspired and moved by the holy spirit of God, Peter the apostle, then and there testified that the Lord God had raised Jesus out of death, and then added: "God hath made that same Jesus, whom ye have crucified, both Lord and Christ"; and at the same time cited the prophecy foretelling that great and marvelous act of God. (Acts 2:31-36) Later the apostle Peter wrote concerning the prophets: "Knowing this first, that no prophecy of the scriptures is of any private interpretation. For the prophecy came not in old time by the will of man; but holy men of God spake as they were moved by the holy spirit."—2 Peter 1:20, 21; see also 2 Samuel 23:2.

Paul the apostle, who was made a special ambassador of the Lord Jesus Christ and who was anointed and filled with the holy spirit, under inspiration

of the holy spirit testified concerning the authenticity of the Scriptures in these words: "All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness; that the man of God may be perfect, thoroughly furnished unto all good works."—2 Timothy 2: 16, 17.

Q You don't deny putting this book out, do you?

A No sir.

Q You put this book out?

A Yes sir.

Q Did you put this book—you didn't give this book, that accompanies this one, to the man? (Refers to another book)

A No sir.

BY MR. CLARK: I offer this, that goes with it, Children.

(Mr. Clark handed Mr. Culkin a small book or pamphlet)

BY MR. CLARK: We offer this in evidence as study questions on this children's book.

BY MR. LAWRENCE: To which we object.

BY THE COURT: If it throws any light on what is taught to children, I will let it go in evidence.

(The book in question was here marked by the court reporter as Exhibit A to the direct examination of the defendant, Clem Cummings. Exhibit A follows):

Q I want to ask you this question: I want you to turn to Page 314 in the book called Children. The reason I turn to that is because that is the basis on which the State has placed the most of their proof as to

disloyalty of the book. This question is asked here in the children's book, and I will ask it like it is here in this book: "How and why are children in a covenant with God persecuted, and why do both they and their parents remain fearless and joyful under such trials?" The Scripture cited there is Ephesians 6:12. There are three Scriptures to read.

BY MR. LAWRENCE: What book is that he has got in his hand?

BY MR. CLARK: That is a Bible.

BY MR. LAWRENCE: That is all right. I oppose that junk.

Q Read it.

A (Reading Ephesians 6:12) "For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places."

Q Read 1 Peter, 3:12-14.

A "For the eyes of the Lord are over the righteous, and his ears are open unto their prayers; but the face of the Lord is against them that do evil. And who is he that will harm you, if ye be followers of that which is good. But and if ye suffer for righteousness' sake, happy are ye; and be not afraid of their terror, neither be troubled."

Q Read 1st John, 4:17-18 verses.

A "Herein is our love made perfect, that we may have boldness in the day of judgment: because as he is, so are we in this world. There is no fear in love; but perfect love casteth out fear; because fear hath torment. He that feareth is not made perfect in love."

Q Read 1st John, 5th chapter, 21.

A "Little children, keep yourselves from idols. Amen."

BY MR. LAWRENCE: Read that again.

BY THE WITNESS: "Little children, keep yourselves from idols. Amen."

Q (By Mr. Clark, resuming) Now then, read under 314 this question pertaining to that.

A (Reading from Exhibit A to testimony of Tom Byrd) "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelations 12: 12-17)"

Q Read Revelation 12: 17.

A "Therefore rejoice ye heavens, and ye that dwell in them. Woe to the inhabitants of the earth and of the sea! for the devil is come down unto you, having great wrath, because he knoweth that he hath but a short time. And when the dragon saw that he was cast upon the earth, he persecuted the woman which brought forth the man child. And to the woman were given two wings of a great eagle, that she might fly into the wilderness, into her place, where she is nourished for a time, and times, and half a time, from the face of the serpent. And the serpent cast out of his mouth water as a flood after the woman, that he might cause her to be carried away of the flood. And the earth helped the woman, and the earth opened her mouth, and swallowed up the flood which the dragon cast out of his mouth. And the dragon was wroth with the woman, and went to make war with the remnant of her seed, which kept the commandments of God, and have the testimony of Jesus Christ."

**Q** I want to deal with one other page now. We will take Page 320 in the book there. You may read it first.

**A** (Reading from Page 320 of Exhibit A to testimony of Tom Byrd) "Jehovah's name is above all things and of supreme importance. His name stands for everything that is good, pure, righteous and holy. His name stands for his purpose toward all creation. His name means that he is the Maker of heaven and earth and the Giver of Life to all that shall ever have life. Centuries ago Satan challenged the name of the Most High, and from then till now Satan has brought great reproach upon the name of Almighty God. Under the influence of that wicked one the masses of human creation have defamed Jehovah's holy name. The Almighty God is long-suffering and permits the wicked to pursue their course of wickedness until his own due time to exalt and vindicate his name. The day of complete vindication of Jehovah's holy name is nigh. During the period of time from the rebellion to the time of vindication Jehovah has shown his favor to those who obey him, and this he has done primarily for his own name's sake."

**BY MR. LAWRENCE:** You read that out of your book?

**BY THE WITNESS:** It is out of the Bible.

**BY MR. LAWRENCE:** It is out of this book.

**BY THE COURT:** This gentleman here has the witness on direct examination.

**BY MR. LAWRENCE:** I beg your pardon.

**BY MR. CLARK:** I will bring that out from the Bible.

**Q** Read why Jehovah's name is of supreme impor-

tance, and how has it been reproached, and why have obedient men been saved. Jeremiah 10: 6.

A "Forasmuch as there is none like unto thee, O Lord: thou art great, and thy name is great in might."

Q Psalms 79: 1-4.

A "O God, the heathen are come into thine inheritance; thy holy temple have they defiled; they have laid Jerusalem on heaps. The dead bodies of thy servants have they given to be meat unto the fowls of the heaven, the flesh of thy saints unto the beasts of the earth. Their blood have they shed like water round about Jerusalem; and there was none to bury them. We are become a reproach to our neighbors, a scorn and derision to them that are round about us."

Q Read the 12th verse of that same chapter.

A "And render unto our neighbors sevenfold into their bosom their reproach, wherewith they have reproached thee, O Lord."

Q Read Psalms 74: 18.

A "Remember this, that the enemy hath reproached, O Lord, and that the foolish people have blasphemed thy name."

Q And the 22nd verse in that same chapter.

A "Arise, O God, plead thine own cause: remember how the foolish man reproacheth thee daily."

Q And the 23rd verse of that same chapter.

A "Forget not the voice of thine enemies: the tumult of those that rise up against thee increaseth continually."

Q Read the 23rd Psalm, one to three.

A "The Lord is my shepherd; I shall not want. He maketh me to lie down in green pastures: he leadeth me besides the still waters. He restoreth my soul: he leadeth me in the paths of righteousness

for his name's sake."

Q Read the 83rd Psalm, beginning with the last three verses.

A "Fill their faces with shame; that they may seek thy name, O Lord. Let them be confounded and troubled forever; yea, let them be put to shame, and perish. That men may know that thou, whose name alone is Jehovah, art the most high over all the earth."

Q Now, Mr. Cummings, in passing this book to Mr. Byrd, the jailer, did you pass or intend to pass a book that taught disloyalty or outspoken refusal to salute the flag?

A No sir.

Q You were undertaking to preach the gospel of the Kingdom?

A That, and nothing else.

Q Mr. Cummings, how long have you been in Vicksburg?

A Since the last of December, 1941.

Q What did you do prior to that time?

A I worked for a railroad for twenty three years.

Q What railroad?

A The Illinois Terminal Railroad Company.

Q At what place?

A I worked out of various terminals. The last place I made my home was Urbana, Illinois.

Q Have you always been one of Jehovah's Witnesses?

A No sir.

Q What church did you belong to other than that?

A None.

Q Have you ever belonged to any other church?

A No sir.

Q Have you ever refused to salute the American flag when you were requested to do so by law?

A I have. I have refused to salute the flag.



Q I said when required to do so by law.

A I had doubts in my mind as to the authority anyone had to request me to do so. In other words, when I was requested to salute the flag, I didn't think the person requesting me to do so had authority to do so.

Q Have you, when a member of the Army of the United States, or did you, when you were in the Army, salute the flag?

A I did.

BY MR. CULKIN: We object to what he did do or would do.

BY THE COURT: Sustained.

Q Do you teach people that it is wrong to salute the flag?

A No sir, at no time.

Q Have you ever taught anybody that it was wrong to salute the flag?

A No sir, I am not interested in that at all; it is not my business.

Q I note in this book you had awhile ago that it says that the devil has influenced certain people. It doesn't say what country or what nation or what people, but it says the devil has influenced certain officials to compel children to engage in idolatrous practices, such as saluting flags and hailing men. Did you know that was in there at the time you passed this book out?

A No sir, I probably read it—I read the book through—but there are many things in there, that I can't keep in my mind, that I took no particular note of it the time I distributed the book. There are many passages in there that I have read, but I made no effort to memorize them at all.

Q Mr. Cummings, at the time that you passed the book, did you intend to cause anybody to read anything that would cause them to become disloyal or disrespectful to, or to stubbornly refuse to salute the flag?

A No sir, it wasn't my intention at all.

Q Would you then say that it was wrong to salute the flag?

A No sir, I wouldn't say it was. It is perfectly right for people to salute the flag if they want to; it is absolutely right.

Q Is the wrong then like that book put it there, where it says the wrong is in compelling children to salute the flag, or bow down to some image or thing, or hailing men?

A In my mind, that is what it means. That is the way I see it. I came to that conclusion some time ago; I don't mind telling why. Along about 1933, Mr. Adolph Hitler came to power and commanded men to hail him—

BY MR. LAWRENCE (Interposing): We object to all that mess, trying to dodge the issue.

BY THE COURT: Sustained, as to why he arrived at the conclusion.

Q Would you say the act, or friendly gesture of saluting the flag—do you think that is any harm?

A I do not.

Q Do you think there is any harm in the flag?

A No sir, not at all.

Q Tell the jury how you feel towards the flag and towards the country.

A When you make a consecration to the Lord, and obey the Lord and be obedient to His commands—Exodus 20:3, 5 says: "Thou shalt have no other gods before me. Thou shalt not make unto thee any

graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth. Thou shalt not bow thyself down to them or serve them." To me, that is that. It would be a violation of my conscience to bow down or salute anything, therefore, to be obedient to the commandments as I see them I do not, myself, engage in that practice. I think it is an individual matter with everyone.

Q Would you advise anybody not to salute the flag?

A No sir, I would not.

Q Have you advised anybody or taught anybody not to salute the flag?

A No sir.

Q You heard some of the witnesses testify here this morning; some of the officers—I may have misunderstood them. Did you at that trial tell them that you taught people not to salute the flag?

A They evidently didn't understand me; that is not my business. My business is preaching the gospel of the kingdom. They evidently misunderstood what I said.

Q Why did the flag issue come up there? This is war time; we should not bring up the flag question now, should we?

A They brought it up; I didn't. I won't talk to anybody about it unless they bring it up. I answer questions from the standpoint of being courteous and polite.

Q Since we are engaged in war, and since this is the book in issue, will you tell the Court and jury when that book was written, and by whom, and if it was written before the war or after the war?

A It was written by J. F. Rutherford, in the United States, and copywrited in 1941 in Brooklyn, New York, U. S. A., and published by the Watchtower

Bible and Tract Society, Inc., written and published prior to the entry of the United States into the war.

Q Is that the only page in that book that you remember—you have been studying it since you were indicted?

A Yes sir.

Q Since you have gone over it do you find any other place about a flag being mentioned, directly or indirectly?

A I find no other citation in the book, I looked for it three days and could find it nowhere else.

Q Did you, when you were placing that book, did you consider yourself preaching the gospel of the Lord when you were giving it out to people?

A Yes sir.

Q Have you got any authority to go from house to house?

2 A I am an ordained minister of the gospel, ordained by the Watchtower Bible and Tract Society, which has a ministerial department, to engage solely in this work. My ordination is from the Scriptures. Isaiah 61: 1 and 2. "The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound. To proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."

Q Did Jesus quote that same Scripture?

A He did. It is part of the ordination of those who are ordained by Almighty God.

Q Did He leave off that part, to "proclaim the day of vengeance?"

A I believe He did; I wouldn't say positively.

Q Have you got—I forgot if you told me or not—have you got an ordination of the Department of Evangelism of the Watchtower Bible and Tract Society?

A I have a certificate of ordination.

Q Where is your ordination?

A Their letter of ordination has not been sent to me.

(The defendant here read a yellow card to the jury, which was then introduced in evidence as Exhibit B to the testimony of Clem Cummings. Exhibit B follows):

**“EXHIBIT B TO TESTIMONY OF  
CLEM CUMMINGS”**

(Certificate of Clem Cummings, as an ordained minister of Jehovah)

Q Mr. Cummings, did this book which you distributed, that you gave to the jailer, did you get that through the United States mail?

A I can't say. I got some of it through the United States mail and some of it by railroad freight.

Q But these books do come through the United States mail?

A Some of them do, depending on the size of the shipment.

Q Does the United States Government recognize Jehovah's Witnesses, and being an ordained minister?

BY MR. LAWRENCE: We object to that.

BY THE COURT: Sustained.

Q You are an ordained minister of the gospel, first, by Jehovah God, through His word, the Bible, and

also by the laws of this country through the Watchtower Bible and Tract Society, Inc.?

A That is right.

Q You are ordained as a minister by the laws of the land and by the Great Creator?

A By both.

Q And when you practiced your religion or your worship, when you passed this book out on the street, not so much in jail because you were just discussing the matter with the jailer; but you don't deny you passed these books out on the street, do you?

A I do not.

Q Were you or not engaged in political activity?

A I was not.

Q Does a Jehovah's Witness engage in political activity?

BY MR. LAWRENCE: We object to that.

BY THE COURT: Over-ruled.

Q Do you—I won't ask about others—but do you, as one of Jehovah's Witnesses, do you engage in politics in any manner?

A I do not.

Q Are you seeking in any way to influence the governments of the world?

A Not at all.

Q Tell whether or not these books are treated as subversive by the Government of the United States?

A They are not.

BY MR. CULKIN: We object to that.

BY THE COURT: Sustained.

Q Have you ever been in the United States Army?

A I volunteered during the First World War.

Q Do you have an honorable discharge?

A Yes sir.

BY MR. CLARK: That is all.

## CROSS EXAMINATION

BY MR. CULKIN

Q Mr. Cummings, you say you don't engage in anything along the lines of political life in this country? Or any other?

A I don't engage in politics of any kind.

Q You distribute the Watchtower, do you?

A Yes sir.

BY MR. CLARK: We object.

BY THE COURT: Over-ruled.

Q Tell the Court and jury what is meant by what I am reading to you on Page 375, Paragraph 2: "Religion is a snare and a racket." "The message set out in the books Enemies and Religion contained warnings to the religious, political and commercial combine that now rule the earth contrary to God's will."?

A I believe it is like it states there.

Q Do you believe religion is a snare and a racket?

A I do.

Q In this Watchtower which you are distributing, the American Legion is mentioned in one of these Watchtowers. You are familiar with what it says, are you?

A I don't know that I am or not.

Q Do you recall that it says that the hierarchy and other gunmen are doing so and so? Do you?



A I don't recall.

Q You don't deny it, do you?

A I have never read it.

Q You mentioned Judge Rutherford, did you?

A The author of that book.

Q Did you know that, during the First World War, he was interned on account of his refusal to pay tribute to the American flag and on account of his activities, that were contrary to what the American people stood for?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q Are you familiar with the fact that Judge Rutherford, on account of the fact that he engaged in such utterances that were calculated to bring about religious and unpatriotic conditions in the country, that he was stopped in the middle of a radio address?

BY MR. CLARK: We object.

BY THE COURT: Sustained.

Q You told the jury that you didn't know what was in that book?

A I said there were no doubt passages there that I couldn't say were in there or not.

Q You didn't know about a statement in this book about saluting the flag being idolatrous?

A I probably read it. I don't keep all of those things in my mind.

Q Tell the Court and jury why, if you didn't know it was in there, as soon as Mr. Byrd asked you about it you turned to page 314 of that book and showed him this particular passage, and showed him where it was idolatrous to salute the flag, based

on what you found in Exodus 20:1-5? Tell the jury, if you didn't know that wasn't in the book, why you went to the passage and quoted Exodus 20:1-5?

A I didn't read out of the book; I read out of the Bible. We didn't read out of the book.

Q You didn't turn to Page 314, where you pointed out that particular place to him?

A Our conversation in the jail was very brief. He asked if I had a Scripture as to why I thought it was wrong to salute the flag, and I showed it to him in his Bible, at Exodus 20:1-5, and he read it.

Q When you had read it to him you told him you did not believe in saluting the flag, and that you would not salute one, and you said Exodus 20:1-5 was your authority for that?

A The authority that applied to me.

Q And you sustained your point of view based on that particular point?

A That is one of them.

Q Tell the jury what the Savior of mankind, the lowly Nazarene meant when people came to Him and showed Him a coin, and He said, "Whose inscription is thereon?", and the people said, "Caesar's," and the Lord said, "Render unto Caesar the things that are Caesar's, and to God the things that are God's." Explain to the Court and jury what the Savior of mankind meant when He said, "Render to Caesar the things that are Caesar's, and to God the things that are God's"? Tell the jury what that means?

A It seems to me it is self explanatory. The Savior testified that His kingdom was not of this world, and to obey all of those laws as long as they did not conflict with God's commandments, therefore it was all right for them to pay their taxes, etc. That

is what we practice.

Q He said to obey all the laws, did He not?

A Not in conflict with God's laws.

Q Read that in the Bible—

A (Interposing) That is the basis of all Scripture.

Q Look in the Bible; you are familiar with it. Find a passage in the Bible—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: Sustained.

Q In your quotation a moment ago you read from John 5:21, to keep your children from idols. Do you regard the American flag as an idol?

A When a man is compelled to bow down and worship it, it becomes an idol, in my mind.

Q Saluting the flag, would that come under what you mean by being idolatrous?

A Not necessarily.

Q Your book says it is idolatrous, does it?

A That particular Scripture may not apply exactly that way. I am not saying.

Q You would not know if the Scriptures applied that way or not. When was the organization, of which you say you are an ordained minister—when was it organized, and by whom?

A Somewhere about 1874, along in there.

Q When did it become actively engaged in the work it is doing now by way of these books and pamphlets?

A That is before my time, but it was after 1874, after the time of its organization. You have reference to the Watchtower Bible and Tract Society?

Q Yes. You have evidence there that says Clem Cummings is vested with certain authority?

A Yes.

Q Do you know a colored woman named Tennessee Jamison, sitting up there (Indicating balcony) ?

A Yes sir.

Q She has one of those things too, has she (Indicating Exhibit B to testimony of Clem Cummings) ?

A I don't know.

Q Do you know Ulysses Hamilton, who lives on the river ? Do you know him ?

A Yes sir.

Q Is he an ordained minister too ?

A I can't say.

Q Look at that card and see (Hands witness card).

A His name is on there.

Q Every human being who distributes these books go around, and every one of them has a card like this ?

A I don't know.

Q Every one of them who distributes these books—

BY MR. CLARK (Interposing) We object.

BY THE COURT: Sustained.

Q As a matter of fact, under your teaching in these books, The Watchtower, God, and The Government, it is not necessary to be ordained as a minister at all; you are called by Jehovah and start out to preach ?

A That is from the Scripture.

Q And you teach that all preachings and teachings of all other denominations are fallacious because they are not authorized by Jehovah ?

A No sir, I don't teach that.

Q Does your book teach that ?

A I don't know.

Q Tell the court and jury what you mean, if you know, about the reference to kings of the north and kings of the south, in this Watchtower.

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

- Q We mentioned the word "politics" a minute ago. What does this mean, where it says: "Will the present world conflict between the 'Axis powers' and the so-called 'Democracies', the opposers, end in a decisive victory for either side? The prophecy indicates the contrary result; and since we have no way of determining the future save by the prophecy of God, as set forth in the Bible—". What do you mean by that?
- A Armageddon will take place and neither one will have authority.
- Q Is that what you mean?

BY MR. CLARK: We object.

BY THE COURT: Sustained.

- Q In the City Hall you told the people it was not in keeping with propriety for them to salute the flag?
- A I don't teach that at all.
- Q You refused then and there to salute the flag and, according to what they said, you said, "I not only don't salute the flag but we teach others not to salute it." Did you say that?
- A No sir, they must have misunderstood it. We don't teach others not to salute it.
- Q You say that this particular belief was started about 1874?
- A I said the Watchtower Bible and Tract Society was organized about that time. The belief has been going on since the time of Adam and the Garden of Eden.
- Q These other influences and religions—your point of view is, that they are all wrong?

A No sir.

Q If this book says that certain authorities are compelling children to indulge in idolatrous practices, such as saluting of the flag, do you believe this book is wrong?

A That is an individual matter.

Q Is it an individual matter with you if the Watchtower says that people who expel children from school for failing to salute the flag, that they are anarchists and wild beasts? You recall the case when children in Pennsylvania were expelled, and if the Watchtower says that the law required them to salute the flag or go home—

BY MR. CLARK (Interposing): We object.

BY THE COURT: Sustained.

Q You believe that the Watchtower, in what it says here, and the books you distribute, that they are absolutely telling what people should do and by what they should abide?

A We each one read it, and study these publications, and if they are in harmony with the Scriptures, that is what we believe. As they are written by men, they are not infallible and may have error in them.

Q Do you believe it is in harmony with Scripture that it is idolatry to salute the flag?

A To me that is an individual matter. I don't tell what others should do.

Q When you come into the office of anyone, or into the home of anyone, and begin playing the graphophone record, and begin passing out your information that it is idolatrous to salute the flag or show it respect, do you believe what you are teaching?

A I don't teach that.

Q Why do you have it on this graphophone record?

A So they can hear the message on the record and have the literature, and they can reach their own conclusion.

Q You give them literature and play the record, and leave it to their conclusion?

A They can accept or reject it.

Q You do take the graphophone record, and take the Watchtower and take Children, and deliver them, and you take God, and Government, and deliver it, or God and State, and if they contain that you just let them read it, which says that it is wrong to salute the flag, and if they don't want to obey it you let them arrive at their own conclusions?

A At their own conclusions.

Q If these books say it is idolatrous and heathenish to require children to salute flags, and children are robbed of their rights when children are required to salute flags, and you know those things are in these books, and you deliver them—is that right?—and let them draw their own conclusions?

A Yes sir.

Q In practically all of them it says that all of the people that have any religious teachings are simply misled—you call them racketeers—I won't say that, but they are mistaken—and the only ones who teach the proper belief are the Jonadabs, or Jehovah's Witnesses?

A No sir, we don't teach. We preach the kingdom, and leave the literature with them.

Q What is the difference between preach and teach?

A We don't teach. We try to tell people how to conduct themselves, and what is right and wrong. It is their obligation, what they believe.

Q You say you don't teach: what does this mean: "Thereat the religious hierarchy and allied clergy will cry out one to another and to their political



and commercial allies, and to the war-ruined people, 'Peace and safety.' Then Jehovah from his throne in the north, and Christ Jesus, his King from the east or sunrising, shall send them a preliminary rebuke," and it says: "He will pour out his indignation and fierce anger as a death-dealing rebuke to the God-forgetting nations, and all the visible earthly part of Satan's organization shall be devoured with the fire of his jealousy. The nations that adopted religion or demonism and made war upon God and his witnesses shall there at Armageddon forever disappear from existence." What does that mean?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained. This man is charged here with distributing that blue book; he is not charged with distributing something else. Even if it does disclose that he distributes them, he can't be convicted for distributing something that he is not charged with in the indictment.

Q You mentioned your military activity. In truth and in fact, at the beginning of the World War you were listed as a conscientious objector, were you?

A No.

Q What does the record show?

A I don't know.

Q It is your record, is it?

A I reckon so. I volunteered in the Army. Did you?

Q Yes. Did you?

A Yes, I volunteered for service.

Q How long were you in the Army?

A Not very long. The fact remains, I did volunteer.

Q You were not married then, were you?

A No sir.

Q Did your attorney ask you when you took up this particular work, and I believe you said a few years ago; it don't make any difference though.

A 1928 or 30; along in there.

Q You are the one that delivered this particular book to Mr. Byrd?

A Yes sir.

Q And delivered it to other people in the City of Vicksburg and Warren County?

A Yes sir, I delivered quite a few of them.

Q In delivering this book, which says it is idolatrous to salute the flag, or any other book, you go out to people and let them study it and arrive at their own conclusions; is that right?

A Yes sir.

Q Did you or not state that you did not salute the flag and that you taught others not to salute it?

A I do no teach others not to salute it. Everyone has their individual rights.

Q Practically everybody has read to the jury this particular passage, and I will ask you to read that passage, down to "God", beginning right here.

A "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God (Revelation 12:12, 17). Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that

has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and children who insist on obeying the commandments of God."

Q According to that, those who pass the laws and require you to salute the flag, and even in the Army, if they salute the flag—people who do that, according to that, are agents of Satan. Is that so?

A I don't say so; I let the Lord do that; I don't judge them.

Q But you did distribute the book?

A Yes sir, I did.

BY MR. CULKIN: That is all.

## REDIRECT EXAMINATION

BY MR. CLARK

Q In regard to Paragraph 2 on Page 314, this is what you read: "Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing." Is it not—the important word there is "compel?"

A Yes sir.

Q Then is the practice of saluting the flag, and making a friendly gesture to Old Glory, is there any harm in that?

A Not at all.

Q The harm is compelling a man against his conscience, is it?

A Yes sir.

Q Is that or not the truth?

A Yes sir.

BY MR. CLARK: That is all.

(Witness excused)

BY MR. CLARK: Your Honor, will you excuse the jury?

(The jury here retired from the courtroom)

BY MR. CLARK: We rest.

BY MR. CULKIN: We rest.

(At the request of Mr. Clark the following motion was incorporated in the record, Mr. Clark asking the court reporter to copy it in its entirety)

**MOTION FOR DIRECTED VERDICT**

**IN THE CIRCUIT COURT OF  
WARREN COUNTY, MISSISSIPPI  
9 JUDICIAL DISTRICT**

No. 4280

**STATE OF MISSISSIPPI vs. CLEM CUMMINGS,**  
*Defendant(s)*

Now come the defendants in the above entitled and numbered cause and file this their **MOTION FOR A DIRECTED VERDICT** at the close of the case and when all evidence is in, and as grounds therefor say:

## ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

## TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Section 1 thereof deprives these defendants of their inherent rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

## THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### FOUR

The statute under which the indictment is drawn known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

#### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

#### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

#### EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undis-

putable evidence shows that the defendants are not guilty of violating any law of the state of Mississippi, and are not guilty of the act charged in the indictment.

WHEREFORE defendants pray that upon consideration hereof the Court exclude all the evidence, grant this motion and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty", and render a judgment dismissing the indictment and discharging the defendants with their costs, and defendants pray for such other and further relief as they may show themselves justly entitled to.

[Signed] G. C. Clark  
 Grover C. Powell  
 Hayden C. Covington  
*Attorneys for Defendants*

BY THE COURT: I over-rule the motion.  
 Bring the jury in.

(The jury here returned to the courtroom)

### **Official Court Reporter's Certificate**

I, T. B. Wright, official court reporter of the 9th Judicial District of Mississippi, do hereby certify that the foregoing pages contain a true, full and correct transcript of my shorthand notes of the proceedings had in the case of the State of Mississippi vs. Clem Cummings, tried at the July term, 1942 of the Circuit Court of Warren County, Mississippi.

I hereby further certify that I have this day filed with the Circuit Clerk in and for said county the original and one carbon copy of this record, and that I have



this day notified, according to law, Messrs. T. J. Lawrence, District Attorney, J. J. O'Neill, County Attorney, and J. H. Culkin, all of Vicksburg, Mississippi, representing the State in the trial of the case, and G. C. Clark, Waynesboro, Mississippi, representing the defendant, that I have this day filed this record.

T. B. Wright  
Official Court Reporter

This the 2nd day of September, 1942.  
Court reporter's fee: \$21.75

### **Pauper's Oath**

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term 1942, the defendant filed his Appeal on Affidavit of Inability to give Cost Bond or Deposit amount of Costs from Circuit Court in Criminal Cases, which said Appeal on Affidavit is in the words and figures as follows, to-wit:

### **APPEAL ON AFFIDAVIT OF INABILITY TO GIVE COST BOND OR DEPOSIT AMOUNT OF COSTS FROM CIRCUIT COURT IN CRIMINAL CASES**

No. 4280

The State of Mississippi vs. Clem Cummings

In the Circuit Court of Warren County, Mississippi.  
I, Clem Cummings, do solemnly swear that I am unable to give a cost bond or to deposit a sufficient amount to cover all costs, and feeling aggrieved by the judgment

and conviction of—violating House Bill 689 of the 1942 Legislative Session—and sentenced to serve in the State Penitentiary for the duration of the war, but not to exceed ten years, as rendered against me in the Circuit Court of Warren County at the July Term, 1942, on the 22nd day of July 1942, I desire an appeal to the Supreme Court with Stay of Judgment.

(Signed) Clem Cummings

Sworn to and subscribed before me this the 23 day of July, 1942.

W. J. Foley  
Circuit Clerk.

ENDORSED:

FILED: July 20, 1942.

W. J. FOLEY, CLERK.

### **Certificate of Clerk**

STATE OF MISSISSIPPI,  
COUNTY OF WARREN..

I, W. J. FOLEY, Clerk of the Circuit Court of aforesaid County and State, do hereby certify that the foregoing pages and lines contain a true and correct copy of the papers and proceedings and judgment in Case No. 4280, "STATE OF MISSISSIPPI Versus: CLEM CUMMINGS," as the same appears of record and on file in my said office.

WITNESS my hand and official seal of said Court at office in Vicksburg, this the 4th day of September A.D. 1942.

W. J. FOLEY, CLERK

(SEAL)

BY: M. F. McLannin D.C.

**COST BILL**

Taking and filing pauper's oath .....	1.10
Certificate .....	1.00
Expressage .....	.50
Stenographer's Transcript .....	21.75
Binding Records .....	2.00
Clerk's Transcript 7100 Words 15c per 100 ..	10.65
(Sec. 1788 Chapter 31, Code 1930)	
Total record cost .....	<u>\$37.00</u>

I hereby certify the above bill to be correct:

W. J. FOLEY, CLERK

OUR FEES PAID.

By: M. F. McLannin, D.C.

**Docket Entries**

**GENERAL DOCKET C-C,  
SUPREME COURT OF MISSISSIPPI**

Case No. 35,155

Circuit Court, Warren County

Clem Cummings vs. State

Cert. filed 7/30/42

Record filed 10/27/42

Assignment Errors: G. C. Clark, G. C. Powell,  
Hayden Covington 8/7/42

Carbon Copy Assignment Errors: G. C. Clark,  
G. C. Powell, Hayden Covington 8/7/42

12 Exhibits: (2 "Children"—"Consolation"; 4 is-  
sues "Watchtower" "Liberty to Preach" "Choosing"  
"Government" 1 "Order Blank")—Filed 10/27/42

6 Copies Brief for Appellant: G. C. Clark, Grover C. Powell, Hayden C. Covington 11/16/42

Brief of Appellee: Geo. H. Ethridge 11/19/42

3 Carbons Brief of Appellee: Geo. H. Ethridge 11/19/42

Stipulation as to question for Court to consider: Geo. H. Ethridge, H. C. Covington 11/21/42

Submitted 11/23/42 BH 63B

54 Exhibits: 6 Copies "Children", 6 Copies "Children Study Questions", 6 copies "Choosing", 6 copies "Government", 6 copies "Consolation", 6 copies of 4 issues "Watchtower"—12/4/42

Affirmed 1/25/43 BH 89 In Banc

Petition for Stay, pending appeal to U. S. Court—H. C. Covington, G. C. Clark 2/1/43

Carbon Petition for Stay, pending appeal to U. S. Court—H. C. Covington, G. C. Clark 2/1/43

Bond for Appeal to U. S. Court 2/2/43

Order Staying Judgment 2/2/43

### Assignment of Errors

## MISSISSIPPI SUPREME COURT

No. 35155

STATE OF MISSISSIPPI

*v.*

CLEM CUMMINGS, *Appellant*

Now comes appellant and assigns the following as error in the lower court, to wit:

### ONE

The court erred in refusing and overruling appellant's motion to quash the indictment duly and timely

filed with the clerk and presented to the court in the manner required by law. Each ground of said motion is made a part of this assignment of error. Said motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

### T W O

The court erred in refusing and overruling appellant's demurrer to the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said demurrer is made a part of this assignment of errors. Said demurrer appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

### T H R E E

The court erred in refusing and overruling appellant's motion for peremptory instruction requesting the trial court to exclude the evidence of the State and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of State's evidence and presented to the court in the manner required by law. Each ground of said motion for peremptory instruction is made a part of this assignment of errors. Said motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

The court erred in refusing and overruling appellant's motion for a directed verdict requesting the trial court to exclude all the evidence and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of all the evidence and presented to the court in the manner

required by law. The motion for directed verdict reads, omitting formal parts, as follows:

Now comes the above named defendant, Clem Cummings, in the above entitled and numbered cause and files this his **MOTION FOR DIRECTED VERDICT**, and as grounds therefor says:

### ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of their rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment of the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

### TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of this defendant because Section 1 thereof deprives this defendant of his inherent rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Four-

teenth Amendment to the United States Constitution.

### THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FOUR

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite, and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

### FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.



### SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

### SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

### EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt, and the undisputed evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

WHEREFORE defendant prays that upon consideration hereof the Court instruct the jury to acquit the defendant and by their verdict say, "We the jury find the defendant not guilty," and render a judgment dismissing the indictment and discharging the defendant with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

### FIVE

The verdict of the jury is contrary to law.

### SIX

The verdict of the jury is not supported by any evidence.

## S E V E N

The judgment of the court is contrary to the law and the evidence.

## E I G H T

The undisputed evidence shows that appellant is not guilty.

## N I N E

The statute in question is unconstitutional on its face because, by its terms, it denies and deprives persons in Mississippi of their rights of freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

## T E N

The statute in question as construed and applied to the facts and circumstances is unconstitutional and denies appellant his rights of freedom of conscience, of press, of speech and of worship of Almighty God, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

## E L E V E N

The statute in question, both on its face and as construed and applied, violates the *due process* and the *equal protection* clauses of the Fourteenth Amendment to the United States Constitution, and is contrary to Section 14 of Article 3 of the Mississippi Constitution, because it is vague, indefinite, uncertain, too general, does not furnish a sufficiently ascertainable standard of guilt, enables the court and jury trying the indictment to speculate, permits arbitrary and discriminatory action and amounts to a dragnet, thus depriving

appellant of his liberty without equal protection and due process of law.

### T W E L V E

The statute in question is in excess of the police power of the State because it unlawfully invades the realm of legislation impliedly delegated to the Federal Government. The statute is superseded by federal legislation pertaining to the United States flag, the present national emergency and the war now being waged between the Axis powers and the United States Government, and therefore duplicates federal legislation and encroaches upon federal powers, and thus deprives appellant of his rights in violation of the United States Constitution.

### T H I R T E E N

The State wholly failed to offer any evidence to show guilt on the part of appellant, since the undisputed evidence showed that appellant was not guilty of the acts charged in the indictment. The State wholly failed to show that the literature distributed by appellant was calculated to encourage disloyalty to the Government, caused racial distrust, disorder, prejudice or hatreds, or reasonably tended to create an attitude of refusal to salute the flag.

### F O U R T E E N

Appellant hereby reserves the right to amend the assignment of errors, incorporating and including additional errors reflected in the record at a time before the term begins at which this case will be argued.

G. C. CLARK

GROVER C. POWELL

HAYDEN C. COVINGTON

Attorneys for Appellant

**Opinion****IN THE SUPREME COURT OF MISSISSIPPI  
No. 35155  
IN BANC****CLEM CUMMINGS v. THE STATE**

(Opinion rendered January 25, 1943)

**ROBERDS, J.**

This case is controlled by the opinion this day handed down in the case of *Taylor v. State*, No. 35143.

We desire to again emphasize, as we tried to emphasize in that case, that the Mississippi statute does not attempt to coerce, control or direct, in the slightest degree, the conscience or religious beliefs of any person. So far as that statute is concerned, one may believe in and worship a Divine Being, or any ideal or thing the worshiper may think divine, under the name of Jehovah, or any other name; or, on the other hand, he is free to worship satan, a golden calf, any animal or thing, or any image of anything, real or imaginary. What the statute does prohibit is the going about into the homes and among the people, and, by affirmative teaching and action, attempting to persuade the people, at this tragic time, to have disrespect for and disloyalty towards the flag and the state and the nation, and to evince an attitude of disobedience to the laws of the land, thereby undermining the war efforts of the state and national governments. The statute does not command any one to salute the flag or do anything else; it simply demands that people shall not engage in certain affirmative activities which the sovereign state, through its legislature, has determined are harmful to other

people and to the public welfare and to the defensive war efforts of the state and nation.

Appellant was indicted for doing the things prohibited by the statute, and the jury found on sufficient evidence that he did them.

**AFFIRMED.**

[SAME TITLE: separate opinion as follows:]

GRIFFITH, J., concurring.

Teaching that to salute the National flag is an act of idolatry, and that the consequences of such an act is eternal damnation, is a pointed symptom of the disease which lies at the bottom of the subversive and destructive doctrines which this appellant and his co-workers are seeking to spread in our state in this time of war, the result of which means everything to us as a state and nation. We must look behind technical obscurities and to the substance of things. If appellant may maintain the right so to teach it and urge it among the soldiers and marines wherever access may be had to them; and if our soldiers were to refuse to salute the flag wherever unfurled, and particularly when the military regulations require them to do so, then we would have an army and a navy which would be entitled to no respect at home or abroad; and whoever teaches that which, if followed, would bring our armed forces into such disrespect ought well to be in the penitentiary, as the statute appropriately declares.

[SAME TITLE: another separate opinion as follows:]

SMITH, C. J., *dissenting*.

I concur in what Judge Alexander has here said, but I am also of the opinion that it is not necessary to determine the constitutionality vel non of this statute for if it is valid its "respect for the flag" provision was not here violated. The language used, and that which the appellant here taught, must be such as "reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag". The word "stubborn", which qualifies the word "refusal", must be given some effect. One of the definitions given by the lexicographers thereto, and which its context requires to be given here, is: "unreasonably unyielding". *State v. Butler*, 96 Ore. 219, 186 Pac. 55. The reason given by this appellant for not himself saluting the flag and teaching others that it is wrong to do so, is based on his interpretation of the Holy Scriptures, according to which such a salute is an act of obeisance to a graven image forbidden by the First and Second Commandments and his belief that these Commandments are still in force. A most "reasonable reason" for not giving the salute. We may differ with the appellant in his interpretation of these Commandments, and I personally do, nevertheless that is a matter for his own determination and not for the determination of the judges of this or any other court.

ALEXANDER and ANDERSON, JJ., concur in this opinion.

[SAME TITLE: another separate opinion as follows:]

ALEXANDER, J., *dissenting*.

Appellant was convicted under an indictment which charged him with distributing a book entitled "Children" which it was alleged "reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States or of the State of Mississippi." The statute under which it is drawn is Chapter 178, Laws of 1942, which is set forth in the controlling opinion in the companion case of Taylor v. State, decided this day. The evidence was restricted to and the conviction based upon the alleged teaching that members of the sect to which appellant belonged could not, consistently with their beliefs, perform the ceremony of a salute to the flag. To one unsympathetic with the mysticism of its creed, it can, and perhaps often is, divested of its religious aspect and thereupon attacked as mere subtle political propaganda. The record does not justify a conclusion that appellant's adherence to its teachings, whether blind or rational, was not sincere. It is clear that the advocacy of the doctrine of non-salute is allegedly based upon an interpretation of scripture. The book was written long before this Nation entered the present war. Both the book and the appellant himself, while professing allegiance to and respect for the flag, conceded the right of non-adherents to follow their own convictions. A careful reading of this book fails to impress me that it teaches dishonor to the flag but respect for a faith.

My interest in and inquiry of the matter is therefore confined to two propositions: 1) Does the literature come within the condemnation of the statute, and 2) if so, is the appellant, the sincerity of whose advocacy thereof is conceded, protected against its compulsions



by United States Constitution, Articles 1 and 14, and by Mississippi Constitution, Section 13.

The first utterance in the Federal Bill of Rights forbids the prohibiting of the free exercise of religion. Such prohibition is made effective against state action by the 14th Amendment. In the Bill of Rights of our own State Constitution, the right of freedom of speech and of the press is declared 'sacred'. Mississippi Constitution, Sections 13 and 18.

In this connection, it is sufficient that certain primal verities of personal liberty be recognized by their mere mention. Freedom of conscience and of the press, purchased in the cruel coinage of persecution survived oppression and suppression, and after breaking down the last barriers of an exercise conceded only under license, they emerged triumphant in the purpose of the founders of our republic who had sought shores where the pursuit of happiness would be unbinderd by ecclesiastical or political restraints. "Religious views are not vouchsafed by the leniency of the state but upon natural indefeasible rights of conscience." *Bloom v. Richards*, 2 Ohio St. 390; *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. State*, 308 U. S. 147; *State v. Greaves*, 112 Vt. 222; *Zimmermann v. Village of London*, 38 Fed. Sup. 582. The founders thereupon made solemn declaration of such rights as being held not at the behest of the state but as endowments of their Creator and as such, unalienable because inherent. Such rights therefore antedated governments which in turn were instituted among men to secure them. *Chance v. Miss. Textbook etc. Board*, 190 Miss. 453, 200 So. 706; *Sullens v. State*, 191 Miss. 856, 4 So. 2d 356. It was made clear that the government was held to derive its just power from the consent of the governed. Whereupon, the people of the United States ordained their Constitution for the lofty purpose, among others, to insure

domestic tranquillity, and to preserve these blessings of liberty not only to themselves but to posterity, of which appellant is now a part.

Even as the several states reserved all powers not granted to the national government (U. S. Constitution, Article 10), so the citizens reserved all powers not granted to the state (Mississippi Constitution, Article 3, Secs. 5, 32) Liberty remained the sovereignty of the people. It includes all rights held to be unalienable so that in examining the issue here involved, it is as important to examine whether the state has infringed the creed of appellant as to determine whether his creed has violated the laws of the land.

A consonance between creed and conduct is one of the ends sought in the pursuit of happiness, which in the last analysis is the ultimate goal of the citizen and is a prerequisite to both individual and national tranquillity and the blessings of liberty. *Whitney v. California*, 274 U. S. 357, 375; *Cooley*, Constl. Lim. 8th Edn., p. 3. Even the safety of the republic as the supreme law must be acknowledged to rest not alone upon its power for a common defense against outside forces but upon maintaining the general welfare. In this pursuit of personal happiness, life is its condition and liberty is the avenue of its achievement. The courts must preserve it intact as a dependable causeway lest by its collapse it become a barricade. Even as liberty is guaranteed to the people, the courts must in turn guaranty life to this liberty. This happiness may not be allowed to be pursued over the crushed convictions of others whose contentment is dependent upon their right to indulge their own beliefs despite their novelty or absurdity. Happiness like disloyalty can not be judicially defined. Each must remain an abstraction subject to definition by the individual. The dilemma with which the courts are often confronted in such cases as we now

have is that they are apt to seek to define objectively things which are of necessity purely subjective. Pound, *Law and Morals*, p. 107. There is no prescription for either which the law can write. In the words of a familiar maxim, liberty is the power of doing what the law permits. Law is found to be a means to restrain or regulate liberty, and in this sense what the law does not forbid it sanctions. As hereafter discussed, the state can regulate conduct but not creed; it can fetter the hand but not the heart. Pound, *op. cit. supra.* p. 68; 4 Bl. Com. 21; *Commonwealth v. Kennedy*, 170 Mass. 18.

So that, it is not only the disability of the state to control conscience but the impropriety that it should attempt to do so which has been recognized in our laws and judicial decisions. The right in the name of conscience to 'affirm' instead of 'swear' in all oaths, to object to active combat military service, and the disqualification for jury service in capital cases are illustrations. If it be urged that these exemptions are recognized by positive statutes, it is an answer that the initial duty, performance of which is absolved, is also decreed by positive statutes. It is as egregious a political incongruity for the state to punish apostasy as that treason should seek to justify itself by conscience. Between the two extremes where on the one hand the state is bound to protect its morals and safety despite religious disapproval, and on the other, where the citizen is free to follow his conscience despite the welfare of the state, there is an area which has ever been the embattled forum both of theorists and judges. Whether the literature disseminated and the opinions expressed by appellant, considered in the light of religious teaching, falls above or below an ascertainable line of demarcation is part of our present task.

History furnishes too many instances where atheism has preached political orthodoxy and where creedal

orthodoxy has taught political heresy for us to regard the persons of men or their affiliation with a particular sect. Since the acts of appellant are not shown to have been instigated by an illegal connivance and his opinions and teachings appear solely the compulsions of his own conscience, I do not think it is relevant to discuss nor mention the sect to which he belongs. Much of the odors of prejudice which hover about appellant seem to cling to the garments of his own peculiar cult into which a dissentient populace has breathed its disapproval. Disrobed of his identifying raiment, he is revealed as a citizen of the United States and of the State of Mississippi, and it is in his status as such that he is entitled to be judged. *Meador v. Hotel Grover*, 9 So. 2d 782, 786; *De Jonge v. U. S.*, 81 L. Ed. 278. Our duty is not to approve nor condemn a ritual but to protect a freedom. We are not called upon to heed the voices of those who, smarting under what they deem a righteous resentment, would choose to display their own loyalty by casting appellant into the fiery furnace of a public's scorn. Neither should this Court extend its arm to defend zealotry against the right of prejudice to speak its frenzied piece. It must direct its solicitude toward the possibility that, in striking against hands which, however justified, are grasping the torch of liberty it may thereby quench the light itself. Of all the actors in this scene, it is the Court alone which is not free but must function in a field of constitutional limitations which are at once a confinement of liberty and a protecting barrier against its invasion. We may not indulge the popular privilege of obeying impulses whose sanction is solely in a love of country. We may inquire only whether the law compels that which this love demands. The one is as free to exhibit his derision as the other is to manifest his devotion. That personal liberty which the state concedes to one to vent his grievance in a

fervid indignation is thus made available to the other in his right to exhibit his consecration in what he deems a righteous martyrdom. The wisdom of neither is any concern of the courts. Truth and sanity must be given both the liberty and responsibility to fend for themselves. *Watson v. Jones*, 80 U. S. 728, 70 L. Ed. 666; *Sullens v. State*, *supra*. The folly of today may be tomorrow's wisdom, and charges of heresy are apt to disclose not so much the status of the condemned as the outspoken reaction of the accuser. Free speech is not a special privilege of the critic. In a companion case this day decided (*Taylor v. State*), the controlling opinion denies to the appellant the right to invest the salute with a religious aspect. By such view, the Court arrogates to itself the right to define religion for the citizen. But religion is essentially subjective. We are without right or power to say that withholding salute to the flag cannot relate to religion unless we mean our own religion. If we assume authority to say that they must be put asunder, we must at the same time concede the right of others equally privileged to join them together. The dictates of conscience are dictated by and not to the conscience. In *Barnette, et al. v. The West Virginia State Board of Education* (decided Oct. 6, 1942, by a three judge court, So. Dist. W. Va.), the court said "The salute of the flag is an expression of the homage of the soul. To force it upon one who has conscientious scruples against giving it, is petty tyranny unworthy of the spirit of this Republic and forbidden, we think, by the fundamental law." A unity of popular approval in a ceremony of salute is eminently desirable, but it is of greater importance that the unity which the Court may protect remain the only one which in a land of diverse races, creeds and philosophies can be maintained—a unity of a common possession of equal rights. The sentiment of our people's pledge to the flag

—‘One nation indivisible with equality and justice for all’—implies not a people undivided in their opinions but undivided in equality and justice. “No country or no society can be conducted by partly acknowledging the securities of liberty and partly denying them, nor by recognizing some of them and denying others. That is part democracy and part tyranny.” Hoover, *The Challenge to Liberty*, p. 198. Freedom of conscience and of religion are absolute. *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213.

Homage to the flag, like disloyalty, in the absence of an established legislative ritual is what the citizen thinks it is. Even as the state may not compel an affiant to swear, and yet may punish his perjury, all that it may require, in the absence of positive law, as to loyalty, is not that it manifest itself in a regimented ceremony but that it remain loyalty. The statute here seeks to punish ‘disloyalty’ and undertakes to define it in terms of an attitude of stubborn refusal to salute the flag. The controlling opinion in the Taylor case (*supra*) has defined the word ‘stubborn’. I see no reason to assume that the Legislature was unaware of its connotation nor to impute to it any purpose other than to recognize the rights of those who, not stubbornly nor arbitrarily, were ‘ready always to give . . . a reason of the hope that is in’ them. To assume that the refusal to salute is stubborn and to argue therefrom that such course is a symptom of a deep-seated disloyalty is to punish one not for the charge against him but for the evidence adduced to prove it. It is of interest to note in this connection that this ‘symptom’ was revealed by the resourcefulness of the prosecutors who at the preliminary hearing displayed in the courtroom a large American Flag and at an opportune moment requested all present to stand and salute. The convictions of appellant were thus ‘smoked out’ when he remained



seated and became at once a witness to his convictions and for the state.

I see no reason to curb the impulse to reveal a complete accord with any act or ceremony which tends to invest the symbols of our freedom with homage and respectful awe. Yet in the light of that common sense which remains the back-log of all the fires of popular enthusiasm, it can clearly be seen that if one be compelled to salute our flag under coercion it would do no good, and if he refrain under conscience it would do no harm. Thomas Jefferson wrote in 1789 "I am persuaded that the good sense of our people will always be found the best army." Hart, *Formation of the Union*, p. 140. No one who is able to recall how betrayal can be symbolized by a salute of affection may gainsay the plain truth that loyalty is a matter not of the act but of the attitude. To withhold judicial condemnation of a conscientious refusal to salute as disloyalty is to recognize not the confounding of but the fundamental separation between the homage due the 'things of God' and those 'of Caesar.' So that the issue in the present case becomes not one of salute *vel non* but loyalty *vel non*.

In this connection, it is appropriate to review the attitude of Gen. Washington expressed in a letter to General Lafayette in connection with conscientious refusal of officers of a Virginia brigade to take an oath of allegiance to the Union. "As every oath should be a free act of the mind founded on the conviction of the party of its propriety, I would not wish in any instance that there should be the least degree of compulsion exercised, or to impose my opinion in order to induce any to make it of whom it is required. The gentlemen therefore who sign the paper will use their own discretion in the matter and swear or not swear as their conscience



and feelings dictate." Sparks, *Life of Washington*, *Life of Washington*, Vol. 5, p. 366.

The literature described in the indictment should not judicially be held to create an 'attitude of stubborn refusal to salute the flag.' Its expressed purpose is to gain adherents to their sect and the import of the references to the flag must be construed in the light of the pledge of allegiance therein advocated. Any refusal is not therefore the fruit of a stubborn or arbitrary disdain but is the considered resultant of the forces of conscience. *Gilbert v. Minnesota*, 254 U. S. 325, 65 L. Ed. 287. It is true that the consciences of its converts as such are taught that the salute implies disobedience to divine command, but it concedes to all others the right to follow any regimen which a popular will sanctions as patriotic or proper. It is interesting to note that in this regard a tolerance is shown which their own detractors may concede to be a trait to which without hurt they might subscribe. Although I have adverted to the requirement of the statute that the refusal to salute must be stubborn before it can be defined as disloyalty, these views are based on the fundamental ground that even disloyalty, to be punished, must itself be defined in terms which will furnish a sufficiently ascertainable standard of guilt. *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066. Moreover, the Act of 1942 leaves disloyalty to be defined according to the wisdom or whim of the trial jurors. Chief Justice Ellsworth once charged a grand jury in regard to subversive acts that "it was not necessary that Congress should define the offense but that the rules of a known law matured by the reason of ages and which Americans have ever been tenacious of as a birthright, you will decide what acts and misdemeanors on the ground of their opposing the existence of the national government" you should prosecute. This novel view was, however, repudiated in

U. S. v. Hudson, 7 Cranch. 32, 3 L. Ed. 259, where the Court said "The legislative authority of the Union must first make an act a crime, affix a punishment to it and declare the court that shall have jurisdiction of the offense." Paterson, Free Speech and a Free Press, p. 130. We have no statute requiring a salute to the flag.

In the dissent in the Taylor case (*supra*) some elaboration is made of the further requirement that the act or conduct advocated must create a clear and present danger that by force or violence the orderly processes of the government will be subverted. There is there discussed also the effect of the war emergency as requiring a readjusted standard for defining the elements of sedition.

In the hearing of the case of Minersville School Dist. v. Gobitis on its first appeal (108 Fed. 2d 683) the Court of Appeals stated that "the salute in this case is very like that of the Hitler regime." In the light of this intimation, the verity of which we do not pause to consider, let it be supposed that under the stress of war psychology ninety per cent of our citizens should borrow from the vague philosophies of defendants' literature the fear that a compulsory salute to the flag smacks too much of a fascism in which the symbols and representatives of a people become deified, would the remaining ten percent be entitled to protection in their claim to a freedom thus to continue to show it homage? There can be but one answer. Constitutional rights are not subject to nullification by reference to a popularity poll. Men's consciences may not be held hostage by the state to compel conformity to a majority view.

The act under which appellant was convicted does not require that the flag be saluted in any prescribed manner. Some courts have held that it may not do so. *Kansas v. Smith* (Kan.), decided July 11, 1942; *Kennedy v. City of Moscow*, 39 Fed. Sup. 26; *Reid v.*

Brookville, 39 Fed. Sup. 30. The Gobitis case (310 U. S. 586) held that a public school had authority as such body by its regulations to compel pupils to salute the flag and to punish disobedience by expulsion. Putting aside the inapplicability of the decision to the present case (as to which, compare *Clark v. State*, 169 Miss. 369, 152 So. 820; 16 C. J. S. 559), it is noteworthy that one of the justices in the Gobitis case dissented and that in *Jones v. City of Opelika*, 62 Sup. Ct. 1231, 86 L. Ed. 1174, three of those who joined in the majority opinion in the former case stated that "We think this is an appropriate occasion to state that we now believe it was wrongly decided." Our attention has been called to a recent case *Barnette v. The W. Va. State Bd. of Edu.*, decided Oct. 6, 1942, by a three judge court for the Southern District of West Virginia. This tribunal in recognition of the present attitude of the Gobitis case as a precedent refused to follow its holding.

The statute under consideration undertakes to punish those who "either by word or deed weaken the morale or unity of our people or adversely affect their honor and respect for the flag or government of the United States or of the State of Mississippi." It declares that such persons "are a menace to the safety of this state." The specification as to a refusal to salute the flag is thereby made a conclusive presumption of both menace and disloyalty. Whether the legislature may constitutionally go this far need not be decided since we are considering only the implied exemption in favor of religious freedom. Nor need we discuss the contention that the form of and occasion for the salute is not prescribed; nor that there is lacking even a general understanding of a public sanction thereof as a dictum of civilian etiquette. We withhold comment also upon the recent Act of Congress (Sec. 7, Act, Cong.

June 22, 1942, Public No. 623) which although requiring the salute for those in military service, adds: "However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress." As heretofore stated, our citizens as such are as free to construe a failure to salute as disloyalty, as are appellants to construe it as idolatry.

This Court need not restrain its expression of reverence for our Nation's flag. It need not enlarge its ready witness thereto by eulogy or apostrophe, although materials for an ample encomium are not wanting and lend themselves to fluency. Nor may the concept be denied expression that the flag is paid its sincerest homage when it is confidently left free to inspire the spontaneous respect of minds which themselves are free. The courts may control what its citizens do to our flag but not what the flag does to them.

Anderson, J., and Smith, C. J., concur in this opinion.

**Judgment**

IN THE SUPREME COURT OF MISSISSIPPI  
MONDAY MORNING, JANUARY 25, 1943  
MINUTE BOOK BH — PAGE 89

No. 35155

Clem Cummings vs. State

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Warren County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the July 1942 Term—a conviction under Chapter 178, General Laws of Mississippi 1942 and a sentence to the State Penitentiary for the duration of the war or not to exceed 10 years—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Warren do pay the costs of this appeal to be taxed, etc.

[Same Caption Omitted in Printing]

**Petition for Appeal, Statement,  
Assignments of Error and  
Prayer for Reversal**

**Petition for Appeal**

Being aggrieved by the final decision of the Supreme Court of the State of Mississippi, and the judgments of the courts below, in the above entitled cause, the appellant herein hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

**Statement**

This case is one in which is challenged the validity of a statute of the State of Mississippi, known as Chapter 178, General Laws of Mississippi, which, when stripped of its preamble and sections 2, 3, 4, 5, 6 and 7, which are not involved, reads:

**SECTION 1.** *Be it enacted by the Legislature of the State of Mississippi,* That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States

or who gives information as to the military operations, or plants of defense or military secrets of the nation or this State, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years."

This statute was duly passed and approved by the Legislature of the State of Mississippi and is here drawn in question upon the ground that said statute is repugnant to the First and Fourteenth Amendments to the United States Constitution. The Supreme Court of the State of Mississippi is the court of last resort in this cause in the State of Mississippi in which a decision could be had and the decision of that court is in favor of the validity of said statute.

Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U.S.C. sec. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U.S.C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Mississippi, court of last resort in this cause in the State of Mississippi, rendered its decision herein on the 25th day of January, 1943, which became final on January 25, 1943, and by its said decision affirmed the judgment of the Circuit Court in said cause. The opinion of said Supreme Court of the State of Mississippi has not yet been officially reported but



is of record unofficially: *Cummings v. State of Mississippi*, 11 So. 2d 683. That opinion appears in the record at page 130, and will appear at 194 Miss. ....

The order and judgment of affirmance by said Supreme Court of the State of Mississippi entered in the office of the Clerk of the said Court on January 25, 1943, became a final judgment on the same day, the date when the opinions were filed in said cause.

### **Assignments of Error**

Now comes appellant in the above cause and files herewith, together with said petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

**FIRST:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

**SECOND:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

**THIRD:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the State's evidence.

**FOURTH:** The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

FIFTH: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a new trial duly and timely filed.

SIXTH: The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

SEVENTH: The Supreme Court of Mississippi erred in failing to hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

EIGHTH: The Supreme Court of Mississippi erred in failing to hold that on its face and as construed and applied the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

NINTH: The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

TENTH: The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 4.

ELEVENTH: The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 9.

### **Prayer for Reversal**

For and on account of the above errors appellant prays that the said judgment of the Supreme Court of the State of Mississippi hereinabove described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for costs.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

[Same Caption Omitted in Printing]

### **Order Allowing Appeal**

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Mississippi on the 25th day of January, 1943, affirming the judgment of the Circuit Court in said cause there titled. to wit, Clem Cummings, appellant v. State of Mississippi, appellee.

It appearing that the appellant in the assignments of error and in said cause before argument attacked the

statute in question on the grounds, as contended by appellant, that it unreasonably abridges freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and that it is void because of vagueness, and in conflict with federal legislation on the same subject, and because there was not evidence to sustain the conviction, all of which contentions were overruled by decision and judgment of the said Supreme Court of the State of Mississippi previously rendered herein.

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of the State of Mississippi became final on January 25, 1943, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

IT IS NOW HERE ORDERED that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Mississippi, and the said judgment of the Circuit Court, in aforesaid cause as provided by law, and,

IT IS FURTHER ORDERED that the Clerk of the Supreme Court of the State of Mississippi shall prepare and certify to the printed transcript of the record, proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States together with all exhibits in the original form, so that he shall have the same in said Court within twenty (20) days from date.

AND IT IS FURTHER ORDERED that security for costs on appeal be fixed in the sum of Two Hundred and Fifty (\$250.00) Dollars and appellant having heretofore presented and filed an undertaking in the sum of One Thousand (\$1000.00) Dollars executed by the National Surety Corporation, which provides for the appearance of the appellant to abide by the judgment of this court and

also to cover the costs of appeal to the United States Supreme Court which has been approved by the court, it is ordered that no additional bond to cover costs be required.

Dated, March , 1943.

**SIDNEY SMITH**

Chief Justice of the  
Supreme Court of the  
State of Mississippi

[Same Caption Omitted in Printing]

### **Citation**

To THE STATE OF MISSISSIPPI and

Its Counsel of Record in the above-entitled cause,  
and

To The Attorney General of the State of Mississippi  
Greeting

You are hereby cited and admonished to appear at a Supreme Court of the United States, at Washington, in the District of Columbia, within twenty (20) days from the date hereof, pursuant to an appeal, filed in the Clerk's office of the Supreme Court of the State of Mississippi, where Clem Cummings is appellant and you are appellee, to show cause, ~~if~~ any there be, why the judgment rendered against said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Sidney Smith, Chief Justice of the Supreme Court of the State of Mississippi, this .. day of March, in the year of our Lord one thousand nine hundred and forty-three.

**SIDNEY SMITH**

Chief Justice of the  
Supreme Court of the  
State of Mississippi

**Bond**

[Filed 2/2/43, Tom O. Ellis, Clerk]

**IN THE SUPREME COURT OF MISSISSIPPI**

No. 35, 155

Clem Cummings, Appellant, v. State of Mississippi

**APPEARANCE and COST BOND ON APPEAL  
to UNITED STATES SUPREME COURT**

WHEREAS, on the 25th day of January, 1943, an Opinion was filed by this Court in the above captioned and numbered case, affirming the judgment and sentence of the Circuit Court of Warren County of July 22, 1942, which judgment was adverse to the Appellant;

WHEREAS, appellant, Clem Cummings, being dissatisfied with said judgment, desires and intends to file an appeal in said matter to the Supreme Court of the United States;

WHEREAS, it is estimated that the costs of Circuit Court, Supreme Court of Mississippi and Supreme Court of the United States will not exceed the sum of \$250.00;

WHEREAS, by Order of Court a bond in the amount of (\$1000.00) Dollars was fixed by the Court to act as an appearance appeal bond and cost bond on appeal to the United States Supreme Court, to be executed and filed by the appellant;

NOW, therefore, Know All Men by These Presents, That we, Clem Cummings, as principal, and the undersigned as sureties, do hereby acknowledge ourselves, our heirs, our executors and successors firmly bound unto the State of Mississippi in the sum of One Thousand (\$1000.00) Dollars. The condition of the bond is such that if the appellant, Clem Cummings, shall prosecute his appeal with effect to the United States Supreme Court and appear before this Court upon the return of the mandate from the United States Supreme Court and abide by the judgment to be entered and pay all costs incurred in the United States Supreme Court by reason of said appeal that such bond and obligation here incurred shall become null and void; however, if the said Clem Cummings shall not prosecute his appeal with effect and if he fails to appear before this Court and abide by the judgment entered against him, the said bond and obligation shall remain in full force and effect.

WITNESS our hands and the seal of the surety corporation on this the 2nd day of Feb. 1943.

(Sgd) G. C. Clark, *Witness*

(Sgd) J. O. Barnes, *Witness*

(Sgd) Clem Cummings

Clem Cummings, *Principal*

NATIONAL SURETY CORPORATION

By (Sgd) F. Wallace

Its Attorney in Fact *as Surety* (SEAL)

Approved and ordered filed on this the 2nd day of February 1943:

(Sgd) Sydney Smith

Chief Justice of the Supreme  
Court of Mississippi.



[Same Caption Omitted in Printing]

### **Statement of Points to Be Relied Upon**

Comes now appellant in the above-entitled cause and states that the points upon which he intends to rely in this Court in this cause as follows:

Point 1. The Supreme Court of the United States should hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 2. The Supreme Court of the United States should hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 3. The Supreme Court of the United States should hold that on its face and as construed and applied, the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

Point 4. The Supreme Court of the United States should hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

Point 5. The Supreme Court of the United States should hold that a general verdict will not support a conviction where the undisputed evidence shows that either ground of

conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

[Same Caption Omitted in Printing]

### **Praecipe for Transcript of the Record**

TO HONORABLE TOM Q. ELLIS, Clerk of the Supreme Court of Mississippi:

You will please prepare a printed copy of the entire record filed in the above entitled and numbered cause in the Circuit Court and the Supreme Court of Mississippi, for the purpose of filing an appeal with the Clerk of the United States Supreme Court. The record should contain the following documents:

(1) All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

(2) Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

(3) Jurisdictional statement.

(4) Order allowing appeal to the Supreme Court of the United States.

(5) Statement of points to be relied upon in the Supreme Court of the United States.

(6) Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

(7) Bond for costs on appeal to the Supreme Court of the United States.

(8) Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

(9) Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

(10) This Praeceptum for transcript of the record.

Dated, March . ., 1943.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

[Same Caption Omitted in Printing]

**Notice Calling Appellee's Attention to  
Paragraph 3 of Rule 12 of Rules of the  
Supreme Court of the United States**

Sirs:

You will take notice that paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States provides that "the appellee may file with the clerk of the court possessed of the record" within 15 days after service of the jurisdictional statement and other papers on appeal, a typewritten statement disclosing any matter or ground making against the jurisdiction of the Supreme Court of the United States asserted by the appellant, which rule is hereby called to your attention as is required by the Rules of the Supreme Court of the United States.

Dated, March . ., 1943.

G. C. CLARK  
HAYDEN C. COVINGTON  
*Attorneys for Appellant*

To: Greek L. Rice

Attorney General and  
George H. Ethridge  
Ass't Attorney General  
Jackson, Mississippi

[Same Caption Omitted in Printing]

### **Acknowledgment of Service**

On behalf of the Appellee in the above entitled cause, service is hereby acknowledged of a printed copy of the record containing copies of the following documents, to-wit:

1. All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

2. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

3. Jurisdictional statement.

4. Order allowing appeal to the Supreme Court of the United States.

5. Statement of points to be relied upon in the Supreme Court of the United States.

6. Praecipe for transcript of the record.

7. Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

8. Bond for costs on appeal to the Supreme Court of the United States.

9. Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

10. Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

Dated, March , 1943.

**GEORGE H. ETHRIDGE**

*Assistant Attorney General  
Counsel for Appellee*

## Stipulation

It is hereby stipulated that the papers hereinbefore printed comprise true and correct copies of the record from the Circuit Court and Supreme Court of the State of Mississippi and that printing of all exhibits is omitted and said exhibits shall be submitted in original form to the Supreme Court of the United States.


Dated, March     , 1943.

GEORGE H. ETHRIDGE  
Assistant Attorney General  
*Counsel for Appellee*

HAYDEN C. COVINGTON  
117 Adams St.  
Brooklyn, New York  
*Counsel for Appellant*

## Clerk's Certificate

STATE OF MISSISSIPPI, COUNTY OF HINDS, ss:

I, Tom Q. Ellis, Clerk of the Supreme Court of Mississippi, do hereby certify that the next foregoing . . . . . pages contain a full, true and complete printed copy of all the papers, pleadings, proceedings proceedings requested in appellant's praecipe for the record on appeal to the United States Supreme Court in the case entitled Clem Cummings v. State of Mississippi, and Numbered 35155 on the docket of the Supreme Court of Mississippi as the same appears  on file in and of record in my office and in our said court.

Given under my hand and seal of office this the 13th day of March, 1943.

TOM Q. ELLIS, Clerk  
Supreme Court of Mississippi  
[SEAL]

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No.



CLEM CUMMINGS, *Appellant*

v.

STATE OF MISSISSIPPI, *Appellee*



APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

## STATEMENT AS TO JURISDICTION

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files a *statement as to jurisdiction* disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

### Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

## **Mississippi Legislation Questioned**

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

### **“HOUSE BILL No. 689**

**“AN ACT to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.**

**“WHEREAS, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and**

**“WHEREAS, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and**

**“WHEREAS, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative departments of the state of Mississippi and of these United States shall enact all laws and do all things necessary to insure domestic tranquility and promote the common defense and general welfare of the people thereof; and**

"WHEREAS, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state of Mississippi are a menace to the safety of this state and these United States.

"NOW, THEREFORE,

"Section 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

"Sec. 2. Any person in possession of maps or parts of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, trans-

portation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the intention of such person to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding \$1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

"Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

"Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

"Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

"Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the courts, such decision shall not be construed so as to render invalid the remainder of this act.

"Sec. 7. That this act shall take effect and be in force from and after its passage.

"Approved March 20, 1942."

The Circuit Court which is the trial court and the appellate court, the Supreme Court of Mississippi, held the statute was not unconstitutional and that it was not superseded by federal statutes on the same subject. Such courts refused to hold that the statute on its face and as construed and applied to the facts abridged the rights of freedom to worship Almighty God, freedom of conscience, of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution. Said courts also held that the statute was not vague, indefinite, too general and a dragnet as construed and applied.

### **Timeliness**

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 145) The petition for appeal and other papers required by the rules of this Court are filed within three months from the date of such judgment. R. 146-159.

### **Opinions**

The opinion of the Supreme Court of Mississippi is reported in 194 Miss ... and in 11 S. 2d 683. It also appears in the record at pages 130 to 144. The opinion is also attached hereto as Appendix to this statement.

### **Statement of Nature of the Case and Rulings of Court Bringing Case Within Jurisdictional Provisions Relied Upon**

In the Circuit Court of Warren County, Mississippi, the appellant, Clem Cummings, was indicted by the grand jury. The indictment returned and filed reads as follows:



## Report of Indictment

And afterwards, to-wit: On the 10th day of July, A.D., 1942, the same being a day of the regular July Term, 1942, the following entry was made on the Minutes of said Court on page 215 of Minute Book "A-2", to-wit:

The Grand Jurors of the State of Mississippi, elected, summoned, empanelled, sworn and charged to inquire in and for the body of the County of Warren, came into Court attended by their proper officer, there being Sixteen (16) of their number present, and upon their oaths and through their Foreman presented to the Court Six (6) True Bills of Indictment, which were endorsed a "True Bill" and the same signed, were presented to the Court, and filed by the Clerk with his endorsement of filing thereon, and numbered as follows to-wit: 4278, 4279, 4280, 4281, 4282 and 4283.

The indictment numbered 4280 is the indictment against the defendant herein, and it is in the words and figures as follows, to-wit:

CIRCUIT COURT      JULY TERM, 1942  
STATE OF MISSISSIPPI, WARREN COUNTY

The Grand Jurors of the State of Mississippi, elected, summoned, empaneled, sworn and charged to inquire in and for the body of Warren County, State of Mississippi, at the term aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that Clem Cummings, late of the County aforesaid, on or before the 9th day of July, A.D. 1942, with force and arms, in the County aforesaid, and within the jurisdiction of this Court, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled: "Children", and said book entitled: "Children" being attached hereto and made a part of said indictment as though copied fully herein; and various other books, leaflets and pamphlets, a further exact description of which said books, leaflets and pamphlets aforesaid is to the Grand-jurors unknown, and which said various other books, leaflets and pamphlets being attached hereto and made a part hereof as though copied fully herein, and all of which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of Mississippi.

Contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

(Signed) T. J. Lawrence  
District Attorney.

Appellant filed and urged a motion to quash the indictment (R. 11-14), which was overruled and exception allowed. (R. 15) A demurrer to the indictment was duly filed and urged (R. 7-11), which was overruled and exception allowed. R. 11.

Appellant pleaded "not guilty". R. 41.

At the close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 15-18), which was overruled and exception allowed. (R. 19) At the close of the entire case and when both parties had rested their case, appellant duly filed a motion for directed verdict, requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 29-32), which was overruled and exception allowed. R. 33.

Under grounds 1 and 2 of the motion to quash (R. 12-13), the demurrer (R. 8), motion for peremptory instruction (R. 16-17), and motion for directed verdict (R. 30-31) appellant attacked the statute on the grounds that on its face, by its terms, and as construed and applied it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution. R. 12-13; 8; 16-17; 30-31.

Under grounds 4 and 5 of the motion to quash (R. 13), the demurrer (R. 9), motion for peremptory instruction (R. 17), and motion for directed verdict (R. 31) appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated Section 1 of the Fourteenth Amendment to the United States Constitution. R. 9; 13; 17; 31.

In the Supreme Court of Mississippi, under assignments of error numbers 1, 2, 3 and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 148) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and worship, contrary to the First and Fourteenth Amendments. (R. 149) Under ground 8 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the Fourteenth Amendment. R. 149.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered, and overruled the same. (R. 130-131, 145) The Court held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press, contrary to the Federal Constitution. The Court held that as construed and applied the rights of freedom of speech, and of press were not abridged, contrary to the First and Fourteenth Amendments. The Court held that freedom to worship Almighty God was not impaired by the conviction and judgment. R. 130-131.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of validity of the same.

### Statement of Facts

Clem Cummings is one of Jehovah's witnesses, an ordained minister of the Watch Tower Bible and Tract Society. Since December 1941 he has been in full-time evangelical work of calling from house to house in the city of Vicksburg. Before entering the full-time ministry he had worked for the Illinois Terminal Railroad Company for twenty-three years at Urbana, Illinois, his native home. (R. 98, 114) He became one of Jehovah's witnesses and began preaching in 1928 in Illinois. Before that he had never belonged to any religion. (R. 98) His wife works with him full time and aids him in preaching from house to house. So does his son.

Appellant is a duly ordained minister. First by Jehovah God and secondly by the Watch Tower Bible and Tract Society, the earthly source of his ordination, which issued to him a certificate of ordination, a copy of which is in the record. When Jesus Christ was upon earth, according to the record in Luke 4: 18, He quoted Isaiah 61: 1, 2 as his heavenly or spiritual ordination of God, to wit: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of Lord, and the day of vengeance of our God; to comfort all that mourn." Appellant claims this same Scriptural authority as a foot-step follower of Christ Jesus. R. 102.

The book *Children*, for distributing which appellant was indicted, tried and convicted, explains the matter thus:

"The word *ordained*, as defined by the best authority (Doctor Strong), means 'to make; to appoint; to anoint; to constitute; to commission'. Only the Lord,

therefore, could truly and properly ordain one to become a witness for Him. [page 225] . . .

"One who becomes a true and faithful servant of God and Christ, and who has received the spirit of the Lord, is ordained or commissioned to preach the good news of the Kingdom and to magnify Jehovah's name, and hence is an 'ordained minister' of the gospel.

"Not only are such persons appointed and commissioned by the Lord to preach the gospel of the Kingdom, but such are emphatically commanded that they must preach the gospel of this kingdom. (Matthew 24: 14) When Christ Jesus appeared at the temple and put his consecrated followers to the test, he sent forth the approved ones to 'offer unto the Lord an offering in righteousness'. (Malachi 3: 3) Such means that they must employ their lips and every other faculty possessed to bear witness to the truth of Jehovah's name and his kingdom. (Hebrews 13: 15) Each one of such is appointed and commissioned to preach the good news by telling the people of the Kingdom, or THEOCRATIC GOVERNMENT. This positive command the Lord Jesus gives, to wit: 'And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come.'—Matthew 24: 14. [page 226]

"All such sincere followers of Christ Jesus who obey this commandment are Jehovah's witnesses, bearing testimony to his name and to his kingdom. No earthly power has any authority to interfere with their preaching 'this gospel', because they are the witnesses of the Most High, or Almighty God, acting under his commandment." [page 227]

Clem Cummings admitted that in the performance of the above commission he used the book *Children* and other publications containing explanation of God's Word as a substitute for oral sermons which he left at



the homes of the people. This was done, not to teach disloyalty, but rather, to assist persons of good-will toward Almighty God to have a knowledge of God's Word, the Bible, and to acknowledge the Bible and Jehovah God the Almighty as its Author and the Supreme One and Creator, and Christ Jesus as Jehovah's Great Prophet. (Deuteronomy 18: 15; Acts 3: 22, 23) (R. 98) It was not the intention of appellant to cause anybody to become disloyal or disrespectful to, or to stubbornly refuse to salute the flag. R. 98, 114.

Because of engaging in this charitable, benevolent and Christian activity the public officials of Vicksburg got stirred up. Appellant was arrested on April 11, 1942, but not charged with any specific offense. No witnesses appeared before him to complain against him. He was placed in the custody of Tom Byrd the jailer at Vicksburg. While thus incarcerated Byrd asked appellant to give him some literature. Thereupon Cummings handed the jailer the book entitled *Children* and also gave him a magazine entitled *The Watchtower*. These were given free and without charge. The jailer then asked Cummings if he would salute the flag and what was his authority. Cummings answered by quoting the Scripture, Exodus 20: 1, 5. (R. 48) Byrd testified against appellant concerning these facts and added that reading the book *Children* and listening to Cummings talk did not affect him one way or the other, did not cause him to have less respect for his government, or any less respect for the country, and that it did not cause him to have an attitude of stubborn refusal to salute the flag. While on the witness stand jailer Byrd read the book *Children* the objectionable part, to wit:

“Satan knows that his time is short, and therefore he is desperately trying to turn all persons, includ-



ing the children, against God. (Revelation 12: 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men." [page 314] R. 45, 46.

'Jonadabs' is the Biblical name prophetically used to describe today those persons of good-will toward Almighty God who take a definite and positive stand for righteousness and who the Lord Jesus said would be rewarded with life eternal on the earth because of kindness shown toward those of His brethren and followers.<sup>1</sup>

The book was introduced in evidence. It is 368 pages in length and is filled with Scriptures from cover to cover. It is a romance in righteousness described in dialogue form between a clean, well-educated, athletic young man and an equally well-educated, beautiful and lovable young woman. In this setting with the two characters, John and Eunice, contemplating marriage they together undertake a study of the Bible. The book is a record of the explanations made to one another as they pursue this course of study. The book contains approximately 900 citations of scriptures. In this study there is revealed to them their duties, privileges, responsibilities and hopes for the future—which are very bright. They learn what they must do to survive the Battle of Armageddon. They learn of the creation of the things recorded in the first three chapters of the

<sup>1</sup> See Chapter 6 of the book *Children*.

Bible. That 'Jehovah created the heavens and formed the earth; He created it not in vain but to be inhabited.' (Isaiah 45:18) That mankind was created perfect, male and female, and placed in Paradise as a home, with perfect fruit, eating of which would sustain them in everlasting life on earth. That Lucifer, the 'son of morning', an angelic creature was appointed as overlord or "anointed cherub that covereth." (Ezekiel 28:13,14) At the time of assignment to this privilege he was faithful and perfect in all his ways. (Ezekiel 28:15) That the Bible records that Lucifer became covetous and ambitious. He was egotistical and much puffed up because of the office conferred on him. (Ezekiel 28:17) He desired the worship and devotion that man was giving Jehovah. "I will ascend into heaven, I will exalt my throne above the stars of God; I will sit also upon the mount of the congregation, in the sides of the north; I will ascend above the heights of the clouds; I will be like the Most High." (Isaiah 14:13,14) See also Isaiah 14:12-20; Ezekiel 28:11-19. This was treason in the highest degree. To carry out the conspiracy to turn man away from Almighty God he resorted to deception and told the first lie (John 8:44), by persuading man to partake of the forbidden fruit, and said: "Ye shall not surely die." (Genesis 3:3,4) This resulted in forfeiture of the right to everlasting life and condemnation to ultimate death. Thus all children ever after were born subject to this judgment and they too in time did die.

Satan then challenged Jehovah that he as overlord of mankind could cause every man of every generation to curse God. God accepted the challenge and has given Satan an opportunity to prove it.

Thereafter Jehovah God caused to be recorded the history of His witnesses, including the nation of Israel and all his faithful servants and prophets operating

under this challenge. All human creatures being free moral agents have been left with the responsibility to choose whom they will serve, Satan or Jehovah. Satan's challenge and the voluntary acceptance thereof by Jehovah's witnesses in all ages has brought much suffering, distress and sorrow upon them but proved Jehovah to be truthful and the Devil a liar. It proved that God can put men on earth who will maintain their integrity. Jehovah did not leave mankind in this condition without hope. He promised and did send a redeemer of mankind from such judgment, who also proved His integrity under persecution and received the reward of being invisible king of THE THEOCRACY, the government of righteousness, to be fully established in the earth in due time. Throughout the centuries Satan has developed a strong invisible opposition government that controls the nations of mankind. (2 Corinthians 4:4; Ephesians 6:12) The history of centuries of this rule is filled with accounts of violence, oppression and deprivation of the rights of conscience.

That Jehovah God is now taking out from among all nations of the earth a people for His name, Jehovah, described as the meek. "The meek shall inherit the earth." (Psalm 37:9-11) This takes place 'at Armageddon' when the Devil's organizations are destroyed off the face of the earth and instead thereof the kingdom of Christ Jesus permanently established by Him, not man. (Daniel 2:44) Through this Redeemer-King all obedient persons will be restored to paradise, which the original man lost, and live eternally on the earth in peace—of which more is said later.

This same message of God's kingdom as the only hope of humanity has been preached throughout sixty centuries in opposition to the religious precepts of Godless rulers who have brought much woe upon Jehovah's witnesses during all those centuries.

In the book Jehovah's witnesses of today are identified as no members of any sect or cult but that they are that group of Christians selected out of the world by Almighty God and are not subject to any human organization or human power and that their primary allegiance is to Almighty God, whom they must obey. Abel is described as the first witness for Jehovah and all faithful prophets of Jehovah from the day of Abel to John the Baptist, all of whom lived prior to Jesus, are specifically named as witnesses at Hebrews chapter 11. It shows that faithful servants of Jehovah since the beginning of time have been in the minority and bitterly persecuted, mocked, scourged, beaten, stoned, hanged and otherwise killed, and torn asunder by the popular majority of their time for the reason that said witnesses obeyed God rather than man. It is pointed out that at all times those who have indulged in reproaching the name of Almighty God and Christ by persecuting of God's witnesses have been and are those persons who indulge in and practice religion. Religionists killed Jesus, stoned Stephen and put faithful Christians to death ever thereafter. The religious dictator of Germany is described as the leading modern-day persecutor of true Christians, Jehovah's witnesses. A distinction is made between religion and Christianity. The former is following in the course mapped by precepts of men while the latter is taking the course dictated by the unadulterated word of Almighty God, the Bible, and following in the footsteps of Jesus. Religionists claim to follow Christ Jesus. Their course of action proves they do not, but follow the Devil. The Christian proves his faith by his works and practices what the Bible teaches by preaching God's kingdom message continuously, publicly and from house to house, faithfully and unto death, regardless of all opposition.

The foregoing history of religious persecution of

Christians is then brought down to modern date in the United States showing how Jehovah's witnesses have been arrested, mobbed and beaten in the land of the free and the home of the brave because of their refusal to violate their covenant to preach God's kingdom message and their refusal to violate their conscience. The facts notoriously known concerning the expulsion from school and the denial of public education to many thousands of children are mentioned. In this setting the objectionable portions of the *Children* book are found, page 314, which are the words objected to by the complaining witnesses. Following the "objectionable" statement is admonition of the Lord to parents as to their responsibility of educating their children in the Word of God—to teach them to faithfully keep their covenant and deal honestly, morally, justly and righteously with all with whom they come in contact and, above all, to honor the name of Jehovah regardless of the cost.

The reward for their faithfulness in thus preaching the good news or gospel is the joy of seeing the name and word of Almighty God vindicated in the destruction of all His enemies in His battle at Armageddon and their own miraculous deliverance by Jehovah. This final act will result in the opening up of the earth to the expansion of God's kingdom in completeness under Christ Jesus, the invisible King in heaven, when the earthly visible part of such government of righteousness will be ruled over by the resurrected *faithful men of old*, the witnesses mentioned in the 11th chapter of Hebrews, who are described as *princes in all the earth*. (Psalm 45: 16; Isaiah 32: 1) Under such earthly government of Jehovah God the people will be restored to health, perfection of body and mind, have unending life, and enjoy everlasting peace and prosperity.

The earth was never filled with a righteous and per-

fect race because of Adam's transgression before bringing forth children. It is God's intention that the earth shall be filled with a perfect and righteous race of people. The privilege of thus filling the earth will be granted to those now on the earth who survive that greatest of all battles at Armageddon. They shall marry and bring forth children and subdue the earth, beautify it by cultivation, landscaping its surface under the Creator's supervision until the entire globe is transformed into a veritable paradise as was the Garden of Eden. All who live will praise Jehovah God, the Eternal One. Thus ends the book *Children*.

The delivery of the book by appellant to the jailer was made the basis of the prosecution instituted against appellant. At the preliminary hearing the jailer testified against appellant. The book was shown by the jailer to George E. Hogaboom, the Chief of Police of Vicksburg, who attended the preliminary hearing also. The chief of police said that the contents of the book did not cause him to "think any less of his country." R.

At the preliminary hearing additional evidence was given against the appellant by the "peace" officers and the prosecuting attorney and the magistrate presiding. This proceeding is best described by Judge Alexander in his dissenting opinion, to wit, "It is of interest to note in this connection that this 'symptom' was revealed by the resourcefulness of the prosecutors who at the preliminary hearing displayed in the courtroom a large American Flag and at an opportune moment requested all present to stand and salute. The convictions of appellant were thus 'smoked out' when he remained seated and became at once a witness to his convictions and for the state." R. 58.

The state claimed that in the midst of this ceremony when called upon to salute and during the explanation



that followed the appellant said, 'We are teaching not to salute the flag and we refuse to salute it.' (R. 63) Appellant denied this emphatically. (R. 101, 110) It is noticed that the literature does not teach others not to salute the flag. The book and booklets *explain the reason why Jehovah's witnesses cannot salute the flag*. No one is told not to salute. All are accorded the right and privilege of saluting who desire to salute. Of this Judge Alexander said: "Both the book and the appellant himself, while professing allegiance to and respect for the flag, conceded the right of non-adherents to follow their own convictions. A careful reading of this book [*Children*] fails to impress me that it teaches dishonor to the flag but respect for a faith." R. 133.

Appellant remains separate and apart from the world as a minister of Jehovah God by refusing to participate in political activity and refusing to influence in any way the governments of this world. It was testified that the literature was not subversive of the United States Government. Appellant did not discuss or raise the flag-salute question with the people when approaching them but confined his conversation to preaching the gospel. When the question was brought up by others he always gave a ready answer. (R. 101) Since the indictment does not allege any violation of the statute by oral statement but confines the prosecution to the literature a summary of the evidence on such oral statements will not be necessary. R. 4.

The record is silent as to any testimony showing that anyone read the book and was influenced thereby to assume an attitude of stubborn refusal to salute the flag. There is no evidence that anyone even tended in that direction by reading the literature. R. 48, 61, 65.



***Grounds and Decisions Sustaining Jurisdiction and  
Showing that Substantial Federal Questions  
are Involved***

**FIRST**

**The courts below should have held that Section 1 of the statute is void on its face because by its terms it unduly abridges the freedom of speech and of the press, contrary to the First and Fourteenth Amendments to the United States Constitution.**

***Decisions Cited***

**Stromberg v. California, 283 U. S. 359**

**Herndon v. Lowry, 301 U. S. 242**

**Near v. Minnesota, 283 U. S. 697**

**Bridges v. California, 314 U. S. 252**

**Thornhill v. Alabama, 310 U. S. 88**

**Carlson v. California, 310 U. S. 106**

**Schneider v. State, 308 U. S. 147**

**De Jonge v. Oregon, 299 U. S. 353**

**Schenck v. United States, 249 U. S. 47**

**Fiske v. Kansas, 274 U. S. 380**

**State v. Klapprott et al., 127 N. J. L. 395,  
22 A. 2d 877**

## SECOND

**The courts below should have held that Section 1 of the statute is unconstitutional as construed and applied to the facts and circumstances of this case because appellant's rights of freedom of speech, press and worship have been abridged, contrary to the First and Fourteenth Amendments to the United States Constitution.**

### *Decisions Cited*

- Cantwell v. Connecticut, 310 U. S. 296  
Schneider v. State, 308 U. S. 147  
Lovell v. Griffin, 303 U. S. 444  
Oney v. Oklahoma City, 120 F. 2d 861  
Lynch v. Muskogee, 47 F. Supp. 589  
Beeler v. Smith, 40 F. Supp. 139  
Stromberg v. California, 283 U. S. 359  
Herndon v. Lowry, 301 U. S. 242  
Bridges v. California, 314 U. S. 252  
Thornhill v. Alabama, 310 U. S. 88  
Carlson v. California, 310 U. S. 106  
De Jonge v. Oregon, 299 U. S. 353  
Schenck v. United States, 249 U. S. 47  
Fiske v. Kansas, 274 U. S. 380  
Near v. Minnesota, 283 U. S. 697

### **THIRD**

**The courts below should have held that the statute is unconstitutional as construed and applied because it does not require that there be a showing of a clear, immediate and present danger that disloyalty to the government or an attitude of stubborn refusal to salute, honor or respect the flag or government or any of the other evils the statute is designed to prevent will result but allows a conviction if the court or jury believes there is a tendency to cause such at any time in the future.**

#### ***Decisions Cited***

Schenck v. United States, 249 U. S. 47

Bridges v. California, 314 U. S. 252

Stromberg v. California, 283 U. S. 359

Thornhill v. Alabama, 310 U. S. 88

De Jonge v. Oregon, 299 U. S. 353

Whitney v. California, 274 U. S. 357, 363-369

Herndon v. Lowry, 301 U. S. 697

## FOURTH

There is no evidence whatsoever that any of the evils prohibited by the statute, to wit, disloyalty to the government or attitude of stubborn refusal to salute the flag or advocacy of the cause of the enemies will result from the words spoken by the appellant or the literature distributed by him.

### *Decisions Cited*

Herndon v. Lowry, 301 U. S. 697

McKee v. Indiana, 37 N. E. 2d 940, .... Ind. ....

People v. Northum, 41 C. A. 2d 284,

103 Cal. Supp. 295

Butash v. State, 212 Ind. 492, .... N. E. 2d ....

Fiske v. Kansas, 274 U. S. 380

Beeler v. Smith, 40 F. Supp. 139

State v. Sentner, .... Iowa ...., 298 N. W. 813

State v. Aspelin, .... Oreg. ...., 203 P. 964

## FIFTH

**The convictions cannot be based upon isolated statements, oral or written, but the court must examine the entire conversations and the contents of the literature from which such statements are taken to determine the intent and meaning of the language objected to.**

### *Decisions Cited*

Schaefer v. United States, 251 U. S. 466, 482  
 United States v. One Book Ulysses, 72 F. 2d 705  
 United States v. Dennett, 39 F. 2d 564  
 Halsey v. New York Society, 234 N. Y. 1, 4  
 Klaw v. New York Press Co., 137 A. D. 466, 688  
 Daniel v. Moncure, 58 Mont. 193, 200

## SIXTH

**The general verdict will not support a conviction where the undisputed evidence shows that either ground of conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.**

### *Decisions Cited*

Stromberg v. California, 283 U. S. 359, 363-366  
 Williams v. North Carolina, 63 S. Ct. 207, 210  
 Thornhill v. Alabama, 310 U. S. 88

## SEVENTH

On its face and as construed and applied, the statute is unconstitutional because it is vague, indefinite, uncertain, too general, fails to furnish ascertainable standard of guilt, enables speculation and amounts to a dragnet thereby permitting the denial of liberty, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

### *Decisions Cited*

Thornhill v. Alabama, 310 U. S. 88, 97-98

Lanzetta v. State, 306 U. S. 451

Herndon v. Lowry, 301 U. S. 242

Connolly v. General Const. Co., 269 U. S. 391, 392

United States v. Cohen Groc. Co., 255 U. S. 81

Internat'l Harvester Co. v. Kentucky, 234 U. S. 216

Standard etc. v. Waugh Chemical, 231 N. Y. 51

## EIGHTH

The existence of state of war in which the nation is engaged does not limit, suspend or shorten the Bill of Rights or the Fourteenth Amendment, but does permit broadening of legislative powers which must first support in direct and specific needs of the fields to which extended, and the terms of the statute do not directly pertain to any such needs.

### *Authorities Cited*

Laski, *Liberty in the Modern State*,  
pp. 56-57, 115, 123, 124-125

Wilson v. Russell, 146 Fla. 539, 1 S. 2d 569

Milligan, Ex parte, 4 Wall. 2, 18 L. Ed. 281, 295

Milk W. D. Union v. Meadowmoor Dairies,  
312 U. S. 287, 320

United States v. Carolene Prod. Co.,  
304 U. S. 144, 152-153



## **Discussion of the Statute in Question and of Federal Questions Presented**

We have thoroughly discussed the validity of the statute in question in the Jurisdictional Statement filed in the companion case of *Taylor v. State of Mississippi* and incorporate the same herein by reference. In the case at bar the dissenting opinions of Judge Alexander and Chief Justice Smith contain excellent discussion of the invalidity of the statute *as construed and applied* to appellant in this case and reference is made to them. (R. 132-144) See also appendix pages 31-43 of this jurisdictional statement.

For the above reasons we submit that the Supreme Court of Mississippi has committed fundamental error and ruled directly contrary to applicable decisions of this Court and has so far departed from the usual and ordinary course and path of constitutional law as to require the exercise of this Court's jurisdiction to correct the same.

### **Conclusion**

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, which we incorporate herein by reference, together with each and every assignment of error therein contained and hereby make same a part hereof to show that substantial questions were presented before the Supreme Court of Mississippi.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with rules of this Court and upon hearing should reverse the judgment of the court below.

Respectfully,

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**APPENDIX A****Opinion**

IN THE SUPREME COURT OF MISSISSIPPI  
No. 35155  
IN BANC

**CLEM CUMMINGS v. THE STATE**

(Opinion rendered January 25, 1943)

**ROBERDS, J.**

This case is controlled by the opinion this day handed down in the case of Taylor v. State, No. 35143.

We desire to again emphasize, as we tried to emphasize in that case, that the Mississippi statute does not attempt to coerce, control or direct, in the slightest degree, the conscience or religious beliefs of any person. So far as that statute is concerned, one may believe in and worship a Divine Being, or any ideal or thing the worshiper may think divine, under the name of Jehovah, or any other name; or, on the other hand, he is free to worship satan, a golden calf, any animal or thing, or any image of anything, real or imaginary. What the statute does prohibit is the going about into the homes and among the people, and, by affirmative teaching and action, attempting to persuade the people, at this tragic time, to have disrespect for and disloyalty towards the flag and the state and the nation, and to evince an attitude of disobedience to the laws of the land, thereby undermining the war efforts of the state and national governments. The statute does not command any one to salute the flag or do anything else; it simply demands that people shall not engage in certain affirmative activities which the sovereign state, through its legislature, has determined are harmful to other

people and to the public welfare and to the defensive war efforts of the state and nation.

Appellant was indicted for doing the things prohibited by the statute, and the jury found on sufficient evidence that he did them.

**AFFIRMED.**

[SAME TITLE: separate opinion as follows:]

**GRIFFITH, J., concurring.**

Teaching that to salute the National flag is an act of idolatry, and that the consequences of such an act is eternal damnation, is a pointed symptom of the disease which lies at the bottom of the subversive and destructive doctrines which this appellant and his co-workers are seeking to spread in our state in this time of war, the result of which means everything to us as a state and nation. We must look behind technical obscurities and to the substance of things. If appellant may maintain the right so to teach it and urge it among the soldiers and marines wherever access may be had to them; and if our soldiers were to refuse to salute the flag wherever unfurled, and particularly when the military regulations require them to do so, then we would have an army and a navy which would be entitled to no respect at home or abroad; and whoever teaches that which, if followed, would bring our armed forces into such disrespect ought well to be in the penitentiary, as the statute appropriately declares.

[SAME TITLE: another separate opinion as follows:]

SMITH, C. J., *dissenting*.

I concur in what Judge Alexander has here said, but I am also of the opinion that it is not necessary to determine the constitutionality vel non of this statute for if it is valid its "respect for the flag" provision was not here violated. The language used, and that which the appellant here taught, must be such as "reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag". The word "stubborn", which qualifies the word "refusal", must be given some effect. One of the definitions given by the lexicographers thereto, and which its context requires to be given here, is: "unreasonably unyielding". *State v. Butler*, 96 Ore. 219, 186 Pac. 55. The reason given by this appellant for not himself saluting the flag and teaching others that it is wrong to do so, is based on his interpretation of the Holy Scriptures, according to which such a salute is an act of obcissance to a graven image forbidden by the First and Second Commandments and his belief that these Commandments are still in force. A most "reasonable reason" for not giving the salute. We may differ with the appellant in his interpretation of these Commandments, and I personally do, nevertheless that is a matter for his own determination and not for the determination of the judges of this or any other court.

ALEXANDER and ANDERSON, JJ., concur in this opinion.

[SAME TITLE: another separate opinion as follows:]

ALEXANDER, J., *dissenting*.

Appellant was convicted under an indictment which charged him with distributing a book entitled "Children" which it was alleged "reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States or of the State of Mississippi." The statute under which it is drawn is Chapter 178, Laws of 1942, which is set forth in the controlling opinion in the companion case of Taylor v. State, decided this day. The evidence was restricted to and the conviction based upon the alleged teaching that members of the sect to which appellant belonged could not, consistently with their beliefs, perform the ceremony of a salute to the flag. To one unsympathetic with the mysticism of its creed, it can, and perhaps often is, divested of its religious aspect and thereupon attacked as mere subtle political propaganda. The record does not justify a conclusion that appellant's adherence to its teachings, whether blind or rational, was not sincere. It is clear that the advocacy of the doctrine of non-salute is allegedly based upon an interpretation of scripture. The book was written long before this Nation entered the present war. Both the book and the appellant himself, while professing allegiance to and respect for the flag, conceded the right of non-adherents to follow their own convictions. A careful reading of this book fails to impress me that it teaches dishonor to the flag but respect for a faith.

My interest in and inquiry of the matter is therefore confined to two propositions: 1) Does the literature come within the condemnation of the statute, and 2) if so, is the appellant, the sincerity of whose advocacy thereof is conceded, protected against its compulsions

by United States Constitution, Articles 1 and 14, and by Mississippi Constitution, Section 13.

The first utterance in the Federal Bill of Rights forbids the prohibiting of the free exercise of religion. Such prohibition is made effective against state action by the 14th Amendment. In the Bill of Rights of our own State Constitution, the right of freedom of speech and of the press is declared 'sacred'. Mississippi Constitution, Sections 13 and 18.

In this connection, it is sufficient that certain primal verities of personal liberty be recognized by their mere mention. Freedom of conscience and of the press, purchased in the cruel coinage of persecution survived oppression and suppression, and after breaking down the last barriers of an exercise conceded only under license, they emerged triumphant in the purpose of the founders of our republic who had sought shores where the pursuit of happiness would be unhindered by ecclesiastical or political restraints. "Religious views are not vouchsafed by the leniency of the state but upon natural indefeasible rights of conscience." *Bloom v. Richards*, 2 Ohio St. 390; *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. State*, 308 U. S. 147; *State v. Greaves*, 112 Vt. 222; *Zimmermann v. Village of London*, 38 Fed. Sup. 582. The founders thereupon made solemn declaration of such rights as being held not at the behest of the state but as endowments of their Creator and as such, unalienable because inherent. Such rights therefore antedated governments which in turn were instituted among men to secure them. *Chance v. Miss. Textbook etc. Board*, 190 Miss. 453, 200 So. 706; *Sulless v. State*, 191 Miss. 856, 4 So. 2d 356. It was made clear that the government was held to derive its just power from the consent of the governed. Whereupon, the people of the United States ordained their Constitution for the lofty purpose, among others, to insure



domestic tranquillity, and to preserve these blessings of liberty not only to themselves but to posterity, of which appellant is now a part.

Even as the several states reserved all powers not granted to the national government (U. S. Constitution, Article 10), so the citizens reserved all powers not granted to the state (Mississippi Constitution, Article 3, Secs. 5, 32) Liberty remained the sovereignty of the people. It includes all rights held to be unalienable so that in examining the issue here involved, it is as important to examine whether the state has infringed the creed of appellant as to determine whether his creed has violated the laws of the land.

A consonance between creed and conduct is one of the ends sought in the pursuit of happiness, which in the last analysis is the ultimate goal of the citizen and is a prerequisite to both individual and national tranquillity and the blessings of liberty. *Whitney v. California*, 274 U. S. 357, 375; *Cooley*, Constl. Lim. 8th Edn., p. 3. Even the safety of the republic as the supreme law must be acknowledged to rest not alone upon its power for a common defense against outside forces but upon maintaining the general welfare. In this pursuit of personal happiness, life is its condition and liberty is the avenue of its achievement. The courts must preserve it intact as a dependable causeway lest by its collapse it become a barricade. Even as liberty is guaranteed to the people, the courts must in turn guaranty life to this liberty. This happiness may not be allowed to be pursued over the crushed convictions of others whose contentment is dependent upon their right to indulge their own beliefs despite their novelty or absurdity. Happiness like disloyalty can not be judicially defined. Each must remain an abstraction subject to definition by the individual. The dilemma with which the courts are often confronted in such cases as we now

have is that they are apt to seek to define objectively things which are of necessity purely subjective. Pound, *Law and Morals*, p. 107. There is no prescription for either which the law can write. In the words of a familiar maxim, liberty is the power of doing what the law permits. Law is found to be a means to restrain or regulate liberty, and in this sense what the law does not forbid it sanctions. As hereafter discussed, the state can regulate conduct but not creed; it can fetter the hand but not the heart. Pound, *op. cit. supra.* p. 68; 4 Bl. Com. 21; *Commonwealth v. Kennedy*, 170 Mass. 18.

So that, it is not only the disability of the state to control conscience but the impropriety that it should attempt to do so which has been recognized in our laws and judicial decisions. The right in the name of conscience to 'affirm' instead of 'swear' in all oaths, to object to active combat military service, and the disqualification for jury service in capital cases are illustrations. If it be urged that these exemptions are recognized by positive statutes, it is an answer that the initial duty, performance of which is absolved, is also decreed by positive statutes. It is as egregious a political incongruity for the state to punish apostasy as that treason should seek to justify itself by conscience. Between the two extremes where on the one hand the state is bound to protect its morals and safety despite religious disapproval, and on the other, where the citizen is free to follow his conscience despite the welfare of the state, there is an area which has ever been the embattled forum both of theorists and judges. Whether the literature disseminated and the opinions expressed by appellant, considered in the light of religious teaching, falls above or below an ascertainable line of demarcation is part of our present task.

History furnishes too many instances where atheism has preached political orthodoxy and where creedal

orthodoxy has taught political heresy for us to regard the persons of men or their affiliation with a particular sect. Since the acts of appellant are not shown to have been instigated by an illegal connivance and his opinions and teachings appear solely the compulsions of his own conscience, I do not think it is relevant to discuss nor mention the sect to which he belongs. Much of the odors of prejudice which hover about appellant seem to cling to the garments of his own peculiar cult into which a dissentient populace has breathed its disapproval. Disrobed of his identifying raiment, he is revealed as a citizen of the United States and of the State of Mississippi, and it is in his status as such that he is entitled to be judged. *Meador v. Hotel Grover*, 9 So. 2d 782, 786; *De Jonge v. U. S.*, 81 L. Ed. 278. Our duty is not to approve nor condemn a ritual but to protect a freedom. We are not called upon to heed the voices of those who, smarting under what they deem a righteous resentment, would choose to display their own loyalty by casting appellant into the fiery furnace of a public's scorn. Neither should this Court extend its arm to defend zealotry against the right of prejudice to speak its frenzied piece. It must direct its solicitude toward the possibility that, in striking against hands which, however justified, are grasping the torch of liberty it may thereby quench the light itself. Of all the actors in this scene, it is the Court alone which is not free but must function in a field of constitutional limitations which are at once a confinement of liberty and a protecting barrier against its invasion. We may not indulge the popular privilege of obeying impulses whose sanction is solely in a love of country. We may inquire only whether the law compels that which this love demands. The one is as free to exhibit his derision as the other is to manifest his devotion. That personal liberty which the state concedes to one to vent his grievance in a

fervid indignation is thus made available to the other in his right to exhibit his consecration in what he deems a righteous martyrdom. The wisdom of neither is any concern of the courts. Truth and sanity must be given both the liberty and responsibility to fend for themselves. *Watson v. Jones*, 80 U. S. 728, 70 L. Ed. 666; *Sullens v. State*, *supra*. The folly of today may be tomorrow's wisdom, and charges of heresy are apt to disclose not so much the status of the condemned as the outspoken reaction of the accuser. Free speech is not a special privilege of the critic. In a companion case this day decided (*Taylor v. State*), the controlling opinion denies to the appellant the right to invest the salute with a religious aspect. By such view, the Court arrogates to itself the right to define religion for the citizen. But religion is essentially subjective. We are without right or power to say that withholding salute to the flag cannot relate to religion unless we mean our own religion. If we assume authority to say that they must be put asunder, we must at the same time concede the right of others equally privileged to join them together. The dictates of conscience are dictated by and not to the conscience. In *Barnette, et al. v. The West Virginia State Board of Education* (decided Oct. 6, 1942, by a three judge court, So. Dist. W. Va.), the court said "The salute of the flag is an expression of the homage of the soul. To force it upon one who has conscientious scruples against giving it, is petty tyranny unworthy of the spirit of this Republic and forbidden, we think, by the fundamental law." A unity of popular approval in a ceremony of salute is eminently desirable, but it is of greater importance that the unity which the Court may protect remain the only one which in a land of diverse races, creeds and philosophies can be maintained—a unity of a common possession of equal rights. The sentiment of our people's pledge to the flag

—‘One nation indivisible with equality and justice for all’—implies not a people undivided in their opinions but undivided in equality and justice. “No country or no society can be conducted by partly acknowledging the securities of liberty and partly denying them, nor by recognizing some of them and denying others. That is part democracy and part tyranny.” Hoover, *The Challenge to Liberty*, p. 198. Freedom of conscience and of religion are absolute. *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213.

Homage to the flag, like disloyalty, in the absence of an established legislative ritual is what the citizen thinks it is. Even as the state may not compel an affiant to swear, and yet may punish his perjury, all that it may require, in the absence of positive law, as to loyalty, is not that it manifest itself in a regimented ceremony but that it remain loyalty. The statute here seeks to punish ‘disloyalty’ and undertakes to define it in terms of an attitude of stubborn refusal to salute the flag. The controlling opinion in the Taylor case (*supra*) has defined the word ‘stubborn’. I see no reason to assume that the Legislature was unaware of its connotation nor to impute to it any purpose other than to recognize the rights of those who, not stubbornly nor arbitrarily, were ‘ready always to give . . . a reason of the hope that is in’ them. To assume that the refusal to salute is stubborn and to argue therefrom that such course is a symptom of a deep-seated disloyalty is to punish one not for the charge against him but for the evidence adduced to prove it. It is of interest to note in this connection that this ‘symptom’ was revealed by the resourcefulness of the prosecutors who at the preliminary hearing displayed in the courtroom a large American Flag and at an opportune moment requested all present to stand and salute. The convictions of appellant were thus ‘smoked out’ when he remained

seated and became at once a witness to his convictions and for the state.

I see no reason to curb the impulse to reveal a complete accord with any act or ceremony which tends to invest the symbols of our freedom with homage and respectful awe. Yet in the light of that common sense which remains the back-log of all the fires of popular enthusiasm, it can clearly be seen that if one be compelled to salute our flag under coercion it would do no good, and if he refrain under conscience it would do no harm. Thomas Jefferson wrote in 1789 "I am persuaded that the good sense of our people will always be found the best army." Hart, Formation of the Union, p. 140. No one who is able to recall how betrayal can be symbolized by a salute of affection may gainsay the plain truth that loyalty is a matter not of the act but of the attitude. To withhold judicial condemnation of a conscientious refusal to salute as disloyalty is to recognize not the confounding of but the fundamental separation between the homage due the 'things of God' and those 'of Caesar.' So that the issue in the present case becomes not one of salute *vel non* but loyalty *vel non*.

In this connection, it is appropriate to review the attitude of Gen. Washington expressed in a letter to General Lafayette in connection with conscientious refusal of officers of a Virginia brigade to take an oath of allegiance to the Union. "As every oath should be a free act of the mind founded on the conviction of the party of its propriety, I would not wish in any instance that there should be the least degree of compulsion exercised, or to impose my opinion in order to induce any to make it of whom it is required. The gentlemen therefore who sign the paper will use their own discretion in the matter and swear or not swear as their conscience



and feelings dictate." Sparks, *Life of Washington*, *Life of Washington*, Vol. 5, p. 366.

The literature described in the indictment should not judicially be held to create an 'attitude of stubborn refusal to salute the flag.' Its expressed purpose is to gain adherents to their sect and the import of the references to the flag must be construed in the light of the pledge of allegiance therein advocated. Any refusal is not therefore the fruit of a stubborn or arbitrary disdain but is the considered resultant of the forces of conscience. *Gilbert v. Minnesota*, 254 U. S. 325, 65 L. Ed. 287. It is true that the consciences of its converts as such are taught that the salute implies disobedience to divine command, but it concedes to all others the right to follow any regimen which a popular will sanctions as patriotic or proper. It is interesting to note that in this regard a tolerance is shown which their own detractors may concede to be a trait to which without hurt they might subscribe. Although I have adverted to the requirement of the statute that the refusal to salute must be stubborn before it can be defined as disloyalty, these views are based on the fundamental ground that even disloyalty, to be punished, must itself be defined in terms which will furnish a sufficiently ascertainable standard of guilt. *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066. Moreover, the Act of 1942 leaves disloyalty to be defined according to the wisdom or whim of the trial jurors. Chief Justice Ellsworth once charged a grand jury in regard to subversive acts that "it was not necessary that Congress should define the offense but that the rules of a known law matured by the reason of ages and which Americans have ever been tenacious of as a birthright, you will decide what acts and misdemeanors on the ground of their opposing the existence of the national government" you should prosecute. This novel view was, however, repudiated in



U. S. v. Hudson, 7 Cranch. 32, 3 L. Ed. 259, where the Court said "The legislative authority of the Union must first make an act a crime, affix a punishment to it and declare the court that shall have jurisdiction of the offense." Paterson, Free Speech and a Free Press, p. 130. We have no statute requiring a salute to the flag.

In the dissent in the Taylor case (*supra*) some elaboration is made of the further requirement that the act or conduct advocated must create a clear and present danger that by force or violence the orderly processes of the government will be subverted. There is there discussed also the effect of the war emergency as requiring a readjusted standard for defining the elements of sedition.

In the hearing of the case of Minersville School Dist. v. Gobitis on its first appeal (108 Fed. 2d 683) the Court of Appeals stated that "the salute in this case is very like that of the Hitler regime." In the light of this intimation, the verity of which we do not pause to consider, let it be supposed that under the stress of war psychology ninety per cent of our citizens should borrow from the vague philosophies of defendants' literature the fear that a compulsory salute to the flag smacks too much of a fascism in which the symbols and representatives of a people become deified, would the remaining ten percent be entitled to protection in their claim to a freedom thus to continue to show it homage? There can be but one answer. Constitutional rights are not subject to nullification by reference to a popularity poll. Men's consciences may not be held hostage by the state to compel conformity to a majority view.

The act under which appellant was convicted does not require that the flag be saluted in any prescribed manner. Some courts have held that it may not do so. *Kansas v. Smith* (Kan.), decided July 11, 1942; *Kennedy v. City of Moscow*, 39 Fed. Sup. 26; *Reid v.*

Brookville, 39 Fed. Sup. 30. The Gobitis case (310 U. S. 586) held that a public school had authority as such body by its regulations to compel pupils to salute the flag and to punish disobedience by expulsion. Putting aside the inapplicability of the decision to the present case (as to which, compare *Clark v. State*, 169 Miss. 369, 152 So. 820; 16 C. J. S. 559), it is noteworthy that one of the justices in the Gobitis case dissented and that in *Jones v. City of Opelika*, 62 Sup. Ct. 1231, 86 L. Ed. 1174, three of those who joined in the majority opinion in the former case stated that "We think this is an appropriate occasion to state that we now believe it was wrongly decided." Our attention has been called to a recent case *Barnette v. The W. Va. State Bd. of Edu.*, decided Oct. 6, 1942, by a three judge court for the Southern District of West Virginia. This tribunal in recognition of the present attitude of the Gobitis case as a precedent refused to follow its holding.

The statute under consideration undertakes to punish those who "either by word or deed weaken the morale or unity of our people or adversely affect their honor and respect for the flag or government of the United States or of the State of Mississippi." It declares that such persons "are a menace to the safety of this state." The specification as to a refusal to salute the flag is thereby made a conclusive presumption of both menace and disloyalty. Whether the legislature may constitutionally go this far need not be decided since we are considering only the implied exemption in favor of religious freedom. Nor need we discuss the contention that the form of and occasion for the salute is not prescribed; nor that there is lacking even a general understanding of a public sanction thereof as a dictum of civilian etiquette. We withhold comment also upon the recent Act of Congress (Sec. 7, Act, Cong.

June 22, 1942, Public No. 623) which although requiring the salute for those in military service, adds: "However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress." As heretofore stated, our citizens as such are as free to construe a failure to salute as disloyalty, as are appellants to construe it as idolatry.

This Court need not restrain its expression of reverence for our Nation's flag. It need not enlarge its ready witness thereto by eulogy or apostrophe, although materials for an ample encômium are not wanting and lend themselves to fluency. Nor may the concept be denied expression that the flag is paid its sincerest homage when it is confidently left free to inspire the spontaneous respect of minds which themselves are free. The courts may control what its citizens do to our flag but not what the flag does to them.

Anderson, J., and Smith, C. J., concur in this opinion.

## APPENDIX B

### Stipulation

#### IN THE SUPREME COURT OF MISSISSIPPI

R. E. TAYLOR, Appellant,	}	
v.		
STATE OF MISSISSIPPI	}	No. 35143
 CLEM CUMMINGS, Appellant,	 }	
v.		
STATE OF MISSISSIPPI	}	No. 35155
 BETTY BENOIT, Appellant,	 }	
v.		
STATE OF MISSISSIPPI	}	No. 35163

Now come Appellants, R. E. Taylor, Clem Cummings, and Betty Benoit, by and through their attorney, Hayden C. Covington, and the Appellee, The State of Mississippi, through its attorney, George H. Ethridge, Assistant Attorney General, and stipulate as follows:

In order that these appeals may be submitted to the United States Supreme Court on the merits at the present term, it is agreed that the appellee, The State of Mississippi, waives its right to file a statement disclosing any matter or ground making against the jurisdiction of the United States Supreme Court asserted by the appellants in their jurisdictional statements and reserves the question of whether or not the cases should be dismissed for "want of substantial Federal question" for consideration of the Federal questions presented on a hearing of these causes on the merits and oral argument thereof before the United States Supreme Court.

Dated: February 23, 1943.

Hayden C. Covington  
Attorney for Appellants

George H. Ethridge  
Attorney for Appellee

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 828



CLEM CUMMINGS, *Appellant*

*v.*

THE STATE OF MISSISSIPPI, *Appellee*



APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

## APPELLANT'S BRIEF

### Opinion Below

The opinion of the Supreme Court of Mississippi is reported in 194 Miss. . . . and in 11 S. 2d 683. It appears also in the record at pages 130 to 144.

### Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chap. 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chap. 440, 45 Stat. 466, an appeal may be taken in any case which under prior statutes could be received as a matter of right on writ of error.

### **Timeliness**

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 145) The petition for appeal and other papers required by the rules of this Court are filed within three months from the date of such judgment. R. 146-159.

### **The Statute**

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

#### **HOUSE BILL No. 689**

**AN ACT** to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.

**WHEREAS**, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and

**WHEREAS**, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and

**WHEREAS**, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative department of the state of Mississippi and of these United

States shall enact all laws and do all things necessary to insure domestic tranquility and promote the common defense and general welfare of the people thereof; and

WHEREAS, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state of Mississippi are a menace to the safety of this State and these United States.

NOW, THEREFORE,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder,

prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Sec. 2. Any person in possession of maps or parts of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, transportation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the intention of such persons to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding \$1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely

any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the courts, such decision shall not be construed so as to render invalid the remainder of this act.

Sec. 7. That this act shall take effect and be in force from and after its passage.

Approved March 20, 1942.

The Circuit Court which is the trial court and the appellate court, the Supreme Court of Mississippi, held the statute was not unconstitutional and that it was not superseded by federal statutes on the same subject. Such courts refused to hold that the statute on its face and as construed and applied to the facts abridged the rights of freedom to worship Almighty God, freedom of conscience, of press and speech contrary to the 1st and 14th Amendments to the United States Constitution. Said courts also held that the statute was not vague, indefinite, too general and a dragnet as construed and applied.

## **The Indictment**

### **CIRCUIT COURT     JULY TERM, 1942 STATE OF MISSISSIPPI, WARREN COUNTY**

The Grand Jurors of the State of Mississippi, elected, summoned, empaneled, sworn and charged to inquire in and for the body of Warren County, State of Mississippi, at the term aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that Clem Cummings, late of the County aforesaid, on or before the 9th day of July, A.D. 1942, with force and arms, in the County aforesaid, and within the jurisdiction of this Court, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled: "Children", and said book entitled: "Children" being attached hereto and made a part of said indictment as though copied fully herein; and various other books, leaflets and pamphlets, a further exact description of which said books, leaflets and pamphlets aforesaid is to the Grand-jurors unknown, and which said various other books, leaflets and pamphlets being attached hereto and made a part hereof as though copied fully herein, and all of which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of Mississippi.

Contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

(Signed) T. J. Lawrence  
District Attorney.



## Statement

Clem Cummings is one of Jehovah's witnesses, an ordained minister of the Watch Tower Bible and Tract Society. Since December 1941 he has been in full-time evangelical work of calling from house to house in the city of Vicksburg. Before entering the full-time ministry he had worked for the Illinois Terminal Railroad Company for twenty-three years at Urbana, Illinois, his native home. (R. 98, 114) He became one of Jehovah's witnesses and began preaching in 1928 in Illinois. Before that he had never belonged to any religion. (R. 98) His wife works with him full time and aids him in preaching from house to house. So does his son.

Appellant is a duly ordained minister. First by Jehovah God and secondly by the Watch Tower Bible and Tract Society, the earthly source of his ordination, which issued to him a certificate of ordination, a copy of which is in the record. When Jesus Christ was upon earth, according to the record in Luke 4: 18, He quoted Isaiah 61: 1, 2 as his heavenly or spiritual ordination of God, to wit: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of Lord, and the day of vengeance of our God; to comfort all that mourn." Appellant claims this same Scriptural authority as a footstep follower of Christ Jesus. R. 102.

The book *Children*, for distributing which appellant was indicted, tried and convicted, explains the matter thus:

"The word *ordained*, as defined by the best authority (Doctor Strong), means 'to make; to appoint; to anoint; to constitute; to commission'. Only the Lord,

therefore, could truly and properly ordain one to become a witness for Him. [page 225] . . .

“One who becomes a true and faithful servant of God and Christ, and who has received the spirit of the Lord, is ordained or commissioned to preach the good news of the Kingdom and to magnify Jehovah’s name, and hence is an ‘ordained minister’ of the gospel.

“Not only are such persons appointed and commissioned by the Lord to preach the gospel of the Kingdom, but such are emphatically commanded that they must preach the gospel of this kingdom. (Matthew 24: 14) When Christ Jesus appeared at the temple and put his consecrated followers to the test, he sent forth the approved ones to ‘offer unto the Lord an offering in righteousness’. (Malachi 3: 3) Such means that they must employ their lips and every other faculty possessed to bear witness to the truth of Jehovah’s name and his kingdom. (Hebrews 13: 15) Each one of such is appointed and commissioned to preach the good news by telling the people of the Kingdom, or THEOCRATIC GOVERNMENT. This positive command the Lord Jesus gives, to wit: ‘And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come.’—Matthew 24: 14. [page 226]

“All such sincere followers of Christ Jesus who obey this commandment are Jehovah’s witnesses, bearing testimony to his name and to his kingdom. No earthly power has any authority to interfere with their preaching ‘this gospel’, because they are the witnesses of the Most High, or Almighty God, acting under his commandment.” [page 227]

Clem Cummings admitted that in the performance of the above commission he used the book *Children* and other publications containing explanation of God’s Word as a substitute for oral sermons which he left at

the homes of the people. This was done, not to teach disloyalty, but rather, to assist persons of good-will toward Almighty God to have a knowledge of God's Word, the Bible, and to acknowledge the Bible and Jehovah God the Almighty as its Author and the Supreme One and Creator, and Christ Jesus as Jehovah's Great Prophet. (Deuteronomy 18: 15; Acts 3: 22, 23) (R. 98) It was not the intention of appellant to cause anybody to become disloyal or disrespectful to, or to stubbornly refuse to salute the flag. R. 98, 114.

Because of engaging in this charitable, benevolent and Christian activity the public officials of Vicksburg got stirred up. Appellant was arrested on April 11, 1942, but not charged with any specific offense. No witnesses appeared before him to complain against him. He was placed in the custody of Tom Byrd the jailer at Vicksburg. While thus incarcerated Byrd asked appellant to give him some literature. Thereupon Cummings handed the jailer the book entitled *Children* and also gave him a magazine entitled *The Watchtower*. These were given free and without charge. The jailer then asked Cummings if he would salute the flag and what was his authority. Cummings answered by quoting the Scripture, Exodus 20: 1, 5. (R. 48) Byrd testified against appellant concerning these facts and added that reading the book *Children* and listening to Cummings talk did not affect him one way or the other, did not cause him to have less respect for his government, or any less respect for the country, and that it did not cause him to have an attitude of stubborn refusal to salute the flag. While on the witness stand jailer Byrd read the book *Children* the objectionable part, to wit:

"Satan knows that his time is short, and therefore he is desperately trying to turn all persons, includ-

ing the children, against God. (Revelation 12:12,17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20:1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men." [page 314] R. 45, 46.

'Jonadabs' is the Biblical name prophetically used to describe today those persons of good-will toward Almighty God who take a definite and positive stand for righteousness and who the Lord Jesus said would be rewarded with life eternal on the earth because of kindness shown toward those of His brethren and followers.<sup>1</sup>

The book was introduced in evidence. It is 368 pages in length and is filled with Scriptures from cover to cover. It is a romance in righteousness described in dialogue form between a clean, well-educated, athletic young man and an equally well-educated, beautiful and lovable young woman. In this setting with the two characters, John and Eunice, contemplating marriage they together undertake a study of the Bible. The book is a record of the explanations made to one another as they pursue this course of study. The book contains approximately 900 citations of scriptures. In this study there is revealed to them their duties, privileges, responsibilities and hopes for the future—which are very bright. They learn what they must do to survive the Battle of Armageddon. They learn of the creation of the things recorded in the first three chapters of the

<sup>1</sup> See Chapter 6 of the book *Children*.

Bible. That 'Jehovah created the heavens and formed the earth; He created it not in vain but to be inhabited.' (Isaiah 45:18) That mankind was created perfect, male and female, and placed in Paradise as a home, with perfect fruit, eating of which would sustain them in everlasting life on earth. That Lucifer, the 'son of morning', an angelic creature was appointed as overlord or "anointed cherub that covereth." (Ezekiel 28:13, 14) At the time of assignment to this privilege he was faithful and perfect in all his ways. (Ezekiel 28:15) That the Bible records that Lucifer became covetous and ambitious. He was egotistical and much puffed up because of the office conferred on him. (Ezekiel 28:17) He desired the worship and devotion that man was giving Jehovah. "I will ascend into heaven, I will exalt my throne above the stars of God; I will sit also upon the mount of the congregation, in the sides of the north; I will ascend above the heights of the clouds; I will be like the Most High." (Isaiah 14:13, 14) See also Isaiah 14:12-20; Ezekiel 28:11-19. This was treason in the highest degree. To carry out the conspiracy to turn man away from Almighty God he resorted to deception and told the first lie (John 8:44), by persuading man to partake of the forbidden fruit, and said: "Ye shall not surely die." (Genesis 3:3, 4) This resulted in forfeiture of the right to everlasting life and condemnation to ultimate death. Thus all children ever after were born subject to this judgment and they too in time did die.

Satan then challenged Jehovah that he as overlord of mankind could cause every man of every generation to curse God. God accepted the challenge and has given Satan an opportunity to prove it.

Thereafter Jehovah God caused to be recorded the history of His witnesses, including the nation of Israel and all his faithful servants and prophets operating

under this challenge. All human creatures being free moral agents have been left with the responsibility to choose whom they will serve, Satan or Jehovah. Satan's challenge and the voluntary acceptance thereof by Jehovah's witnesses in all ages has brought much suffering, distress and sorrow upon them but proved Jehovah to be truthful and the Devil a liar. It proved that God can put men on earth who will maintain their integrity. Jehovah did not leave mankind in this condition without hope. He promised and did send a redeemer of mankind from such judgment, who also proved His integrity under persecution and received the reward of being invisible king of THE THEOCRACY, the government of righteousness, to be fully established in the earth in due time. Throughout the centuries Satan has developed a strong invisible opposition government that controls the nations of mankind. (2 Corinthians 4:4; Ephesians 6:12) The history of centuries of ~~this~~ rule is filled with accounts of violence, oppression and deprivation of the rights of conscience.

That Jehovah God is now taking out from among all nations of the earth a people for His name, Jehovah, described as the meek. "The meek shall inherit the earth." (Psalm 37:9-11) This takes place 'at Armageddon' when the Devil's organizations are destroyed off the face of the earth and instead thereof the kingdom of Christ Jesus permanently established by Him, not man. (Daniel 2:44) Through this Redeemer-King all obedient persons will be restored to paradise, which the original man lost, and live eternally on the earth in peace—of which more is said later.

This same message of God's kingdom as the only hope of humanity has been preached throughout sixty centuries in opposition to the religious precepts of Godless rulers who have brought much woe upon Jehovah's witnesses during all those centuries.



In the book Jehovah's witnesses of today are identified as no members of any sect or cult but that they are that group of Christians selected out of the world by Almighty God and are not subject to any human organization or human power and that their primary allegiance is to Almighty God, whom they must obey. Abel is described as the first witness for Jehovah and all faithful prophets of Jehovah from the day of Abel to John the Baptist, all of whom lived prior to Jesus, are specifically named as witnesses at Hebrews chapter 11. It shows that faithful servants of Jehovah since the beginning of time have been in the minority and bitterly persecuted, mocked, scourged, beaten, stoned, hanged and otherwise killed, and torn asunder by the popular majority of their time for the reason that said witnesses obeyed God rather than man. It is pointed out that at all times those who have indulged in reproaching the name of Almighty God and Christ by persecuting of God's witnesses have been and are those persons who indulge in and practice religion. Religionists killed Jesus, stoned Stephen and put faithful Christians to death ever thereafter. The religious dictator of Germany is described as the leading modern-day persecutor of true Christians, Jehovah's witnesses. A distinction is made between religion and Christianity. The former is following in the course mapped by precepts of men while the latter is taking the course dictated by the unadulterated word of Almighty God, the Bible, and following in the footsteps of Jesus. Religionists claim to follow Christ Jesus. Their course of action proves they do not, but follow the Devil. The Christian proves his faith by his works and practices what the Bible teaches by preaching God's kingdom message continuously, publicly and from house to house, faithfully and unto death, regardless of all opposition.

The foregoing history of religious persecution of



Christians is then brought down to modern date in the United States showing how Jehovah's witnesses have been arrested, mobbed and beaten in the land of the free and the home of the brave because of their refusal to violate their covenant to preach God's kingdom message and their refusal to violate their conscience. The facts notoriously known concerning the expulsion from school and the denial of public education to many thousands of children are mentioned. In this setting the objectionable portions of the *Children* book are found, page 314, which are the words objected to by the complaining witnesses. Following the "objectionable" statement is admonition of the Lord to parents as to their responsibility of educating their children in the Word of God—to teach them to faithfully keep their covenant and deal honestly, morally, justly and righteously with all with whom they come in contact and, above all, to honor the name of Jehovah regardless of the cost.

The reward for their faithfulness in thus preaching the good news or gospel is the joy of seeing the name and word of Almighty God vindicated in the destruction of all His enemies in His battle at Armageddon and their own miraculous deliverance by Jehovah. This final act will result in the opening up of the earth to the expansion of God's kingdom in completeness under Christ Jesus, the invisible King in heaven, when the earthly visible part of such government of righteousness will be ruled over by the resurrected *faithful men of old*, the witnesses mentioned in the 11th chapter of Hebrews, who are described as *princes in all the earth*. (Psalm 45: 16; Isaiah 32: 1) Under such earthly government of Jehovah God the people will be restored to health, perfection of body and mind, have unending life, and enjoy everlasting peace and prosperity.

The earth was never filled with a righteous and per-

fect race because of Adam's transgression before bringing forth children. It is God's intention that the earth shall be filled with a perfect and righteous race of people. The privilege of thus filling the earth will be granted to those now on the earth who survive that greatest of all battles at Armageddon. They shall marry and bring forth children and subdue the earth, beautify it by cultivation, landscaping its surface under the Creator's supervision until the entire globe is transformed into a veritable paradise as was the Garden of Eden. All who live will praise Jehovah God, the Eternal One. Thus ends the book *Children*.

The delivery of the book by appellant to the jailer was made the basis of the prosecution instituted against appellant. At the preliminary hearing the jailer testified against appellant. The book was shown by the jailer to George E. Hogaboom, the Chief of Police of Vicksburg, who attended the preliminary hearing also. The chief of police said that the contents of the book did not cause him to "think any less of his country." R. 61.

At the preliminary hearing additional evidence was given against the appellant by the "peace" officers and the prosecuting attorney and the magistrate presiding. This proceeding is best described by Judge Alexander in his dissenting opinion, to wit, "It is of interest to note in this connection that this 'symptom' was revealed by the resourcefulness of the prosecutors who at the preliminary hearing displayed in the courtroom a large American Flag and at an opportune moment requested all present to stand and salute. The convictions of appellant were thus 'smoked out' when he remained seated and became at once a witness to his convictions and for the state." R. 58.

The state claimed that in the midst of this ceremony when called upon to salute and during the explanation

that followed the appellant said, 'We are teaching not to salute the flag and we refuse to salute it.' (R. 63) Appellant denied this emphatically. (R. 101, 110) It is noticed that the literature does not teach others not to salute the flag. The book and booklets *explain the reason why Jehovah's witnesses cannot salute the flag*. No one is told not to salute. All are accorded the right and privilege of saluting who desire to salute. Of this Judge Alexander said: "Both the book and the appellant himself, while professing allegiance to and respect for the flag, conceded the right of non-adherents to follow their own convictions. A careful reading of this book [*Children*] fails to impress me that it teaches dishonor to the flag but respect for a faith." R. 133.

Appellant remains separate and apart from the world as a minister of Jehovah God by refusing to participate in political activity and refusing to influence in any way the governments of this world. It was testified that the literature was not subversive of the United States Government. Appellant did not discuss or raise the flag-salute question with the people when approaching them but confined his conversation to preaching the gospel. When the question was brought up by others he always gave a ready answer. (R. 101) Since the indictment does not allege any violation of the statute by oral statement but confines the prosecution to the literature a summary of the evidence on such oral statements will not be necessary. R. 4.

The record is silent as to any testimony showing that anyone read the book and was influenced thereby to assume an attitude of stubborn refusal to salute the flag. There is no evidence that anyone even tended in that direction by reading the literature. R. 48, 61, 65.

## **History of Proceedings and Federal Questions Raised Below**

### **CIRCUIT COURT PROCEEDINGS**

Appellant filed and urged a motion to quash the indictment (R. 11-14), which was overruled and exception allowed. (R. 15) A demurrer to the indictment was duly filed and urged (R. 7-11), which was overruled and exception allowed. R. 11.

Appellant pleaded "not guilty". R. 41.

At the close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 15-18), which was overruled and exception allowed. (R. 19) At the close of the entire case and when both parties had rested their case, appellant duly filed a motion for directed verdict, requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 29-32), which was overruled and exception allowed. R. 33.

Under grounds 1 and 2 of the motion to quash (R. 12-13), the demurrer (R. 8), motion for peremptory instruction (R. 16-17), and motion for directed verdict (R. 30-31) appellant attacked the statute on the grounds that on its face, by its terms, and as construed

and applied it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution. R. 12-13; 8; 16-17; 30-31.

Under grounds 4 and 5 of the motion to quash (R. 13), the demurrer (R. 9), motion for peremptory instruction (R. 17), and motion for directed verdict (R. 31) appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated Section 1 of the Fourteenth Amendment to the United States Constitution. R. 9; 13; 17; 31.

#### SUPREME COURT OF MISSISSIPPI PROCEEDINGS

In the Supreme Court of Mississippi, under assignments of error numbers 1, 2, 3 and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 148) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the

trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and worship, contrary to the First and Fourteenth Amendments. (R. 149) Under ground 8 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the Fourteenth Amendment. R. 149.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered, and overruled the same. (R. 130-131, 145) The Court held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press, contrary to the Federal Constitution. The Court held that as construed and applied the rights of freedom of speech, and of press were not abridged, contrary to the First and Fourteenth Amendments. The Court held that freedom to worship Almighty God was not impaired by the conviction and judgment. R. 130-131.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of validity of the same.

## Specification of Errors to be Urged

(1) The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Supreme Court of Mississippi erred in failing to hold that, as construed and applied to the particular facts and circumstances of the case, the statute in question is unconstitutional because, as so construed and applied, it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The Supreme Court of Mississippi erred in failing to hold that, on its face and as construed and applied, the statute violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellant of liberty without equal protection and due process of law.



(4) The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

(5) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

(6) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

(7) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the state's evidence.

(8) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

## **Points for Argument**

### **ONE**

**The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.**

#### **A**

**Freedom of speech historically is guaranteed by the First Amendment and the states are prohibited from abridging the right by the Fourteenth Amendment.**

#### **B**

**Existence of a state of war does not suspend, restrict or narrow the guarantees of freedom of speech contained in the First Amendment.**

#### **C**

**As construed by the highest court of Mississippi the statute is not confined directly to the needs of the police power broadened over peace-time legislation, but deals with matters which at most are only indirectly connected with the war and is therefore in excess of authority.**

#### **D**

**As construed by the highest court of Mississippi the statute is void because it does not require a showing and finding that the language presents a clear and present danger to the war effort, protection of which is the claimed purpose of the statute.**

**E**

There is no evidence that the language complained of constitutes a clear and present danger that any of the evils aimed against by the statute will result, and the undisputed evidence further shows that there was no reasonable tendency of appellant's conduct to cause the results prohibited by the statute.

**F**

The judicial branch of the government rather than the legislative authority must decide when the liberty of speech must yield to the police power, and in performing this task the courts should make a deeper inquiry than when property rights are involved because presumption of validity of legislative enactments does not overcome guarantees of the First Amendment.

**G**

The cases discussed show that the rule this court applies does not warrant the abridgment of the right of free speech under the facts and circumstances revealed in this case.

**T W O**

The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.

**A**

Freedom to worship Almighty God is guaranteed by the First Amendment and the states are prohibited from abridging this right by the Fourteenth Amendment.

**B**

Since appellant's method of preaching and the way of worshiping Almighty God is by visiting the people at their homes and discussing the Bible with them, the foregoing freedom to worship is a *basic issue* in this case and it cannot be judicially declared irrelevant or not involved.

**C**

No abuse of the exercise of the right of freedom to worship Almighty God is shown by the facts so as to warrant an interference under the statute.

**D**

Speech and writings which contain opinion relating to interpretation and fulfillment of prophecy, the relation between the Creator and the creature and the duties imposed by conscience should be given the fullest protection possible against interference by statute, so long as there is no clear and present danger of open violence, or a violation of the laws of property or morality.

**E**

There is no evidence that the activity of the appellant in preaching the gospel constituted a clear and present danger that any of the things aimed against by the statute will result.

**F**

The oldest cases in point, recorded by the Eternal Judge in the volume of His Word, show that the words spoken and printed, here drawn in question, are proper and right and are entitled to protection because this is a Christian nation binding itself to the recognition of the supremacy of the Law of Almighty God as expressed in the Bible.

**G**

Many recent holdings of the courts sustain the right of appellant to distribute literature and to speak the words complained of under the guarantee of freedom to worship Almighty God.

**THREE**

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.

**A**

The broadest possible latitude in criticism and comment on world events, national affairs, state and national governments and public officials, was intended by the framers of the First Amendment to be guaranteed to the press, in times of war as well as in times of peace.

**B**

The publications in question related to a matter of fair comment on present-day world events and course of action taken against Jehovah's witnesses in which the public had an interest.

**C**

The publications in question contained only statements made by Jehovah's witnesses as an official explanation of their attitude toward the national flag and governments of this world in defense of the charges made against them and misunderstandings resulting from false reports concerning their loyalty.

**D**

There is no evidence that the writings complained of constitute a clear and present danger that any of the things aimed against by the statute will result, nor 'reasonably tend' toward such result.

**E**

The distributor of the literature and the publisher are equally protected against application of the statute to their activity because distribution as well as publication or printing is protected.

**F**

As construed and applied, the statute absolutely prohibits exercise of the right of freedom of the press previously condemned by this court.

**G**

The cases involving publications show that the rule applied by this court does not allow abridgment of the right of freedom of the press in the circumstances shown in this case.

**FOUR**

The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

## ARGUMENT

### ONE

**The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.**

The undisputed evidence shows that appellant was exercising his right of free speech in explaining to the jailer the reason why he could not salute the flag and in quoting the Bible record of portions of God's Law at Exodus 20: 3-5 and in handing to the jailer the book *Children* which explained fully the reasons why he, as one of Jehovah's witnesses, could not conscientiously salute the American flag.

When commanded to salute the American flag by the prosecutor and magistrate at the preliminary examination appellant refused to do so and thereby exercised his right of freedom of speech.

He was convicted therefor because he exercised his right of freedom of speech and there are no facts presented in the record which warrant the abridgment of freedom of speech, and accordingly, the statute, as construed and applied to his conduct, under all the facts and circumstances, violates the First and Fourteenth Amendments for these reasons.

Insofar as the right of freedom of speech relates to the succeeding point of freedom of worship, it is discussed under point TWO.

The right of freedom of speech has been exhaustively briefed and argued under point ONE in the brief filed in the companion case of *Taylor v. State of Mississippi*, pages 23 to 77, which we incorporate by reference as though printed at length herein.



## TWO

**The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.**

### A

**Freedom to worship Almighty God is guaranteed by the First Amendment and the states are prohibited from abridging this right by the Fourteenth Amendment.**

The First Amendment to the Constitution of the United States provides that Congress shall make no law respecting the establishment of religion or abridging the free exercise thereof. The provisions of this amendment have been made applicable to restrain the abridgment of this fundamental freedom by the states in the adoption of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296.

The beaten and oppressed minority that fled from blood-soaked soil of Europe and escaped also the oppressive yoke of tyrant kings of Britain had clearly in mind the need for guarantees of freedom of worship, not only in the Constitution of each of the several states but also in the Federal Constitution. The failure to provide for this guarantee raised such a storm of protest amongst the Colonies that the First Amendment was speedily adopted without opposition. A casual examination of the history of the original colonies and of the conditions from which the early settlers escaped, shows a determination to guarantee, preserve and perpetuate forever freedom to worship Almighty God and freedom of religion. Considering such history, the current events of the day fresh in the minds of the authors of the federal compact, the clear intent to guard against the slightest approach toward an encroachment of these rights is

appreciated. There had been centuries of religious persecution and oppression. At times one party or religion was in power, at other times some other power or religious sect held the reins of state. The pages of history are replete with the bloody crimes of the Inquisition, the fiery stake, the rack, the massacres and other such means for suppression of heresy, to say nothing of the religious wars that drenched the continent of Europe with blood and sowed a spirit of hate.

Judge Cooley, in his *Constitutional Limitations* (8th ed., p. 960), says:

"Whatever, therefore, may have been their individual sentiments upon religious questions, or upon the propriety of the state assuming supervision and control of religious affairs under other circumstances, the general voice has been, that persons of every religious persuasion should be made equal before the law, and that questions of religious belief and religious worship should be questions between each individual and his Maker."

*The Four Freedoms*, a pamphlet prepared under the supervision of and released by the Office of War Information, Washington, D. C., has this to say:

" . . . A person who lives under a tyrant, and has lost freedom of speech, must necessarily be tortured by fear. A person who is in great want is usually also in great fear—fear of even direr want and greater insecurity. A person denied the right to worship in his own way has thereby lost the knack of free speech, for unless he is free to exercise his religious conscience, his privilege of free speech (even though not specifically denied) is meaningless. . . .

"The first two freedoms—freedom of speech and freedom of religion—are cultural. They are preroga-

tives of the thinking man, of the creative and civilized human being. Sometimes, as in the United States, they are guaranteed by organic law. They are rather clearly understood, and the laws protecting them are continually being revised and adjusted to preserve their basic meaning. . . .

### "FREEDOM OF RELIGION

"That part of man which is called the spirit and which belongs only to himself and to his God, is the very first concern in designing a free world. It was not their stomachs but their . . . souls which brought the first settlers to America's shores, and they prayed before they ate. Freedom of conscience, the right to worship God, is part of our soil and of the sky above this continent.

"Freedom of worship implies that the individual has a source of moral values which transcends the immediate necessities of the community, however important these may be. It is one thing to pay taxes to the state—this men will do; it is another to submit their consciences to the state—this they politely decline. The wise community respects this mysterious quality in the individual, and makes its plans accordingly.

"The democratic guarantee of freedom of worship is not in the nature of a grant—it is in the nature of an admission. It is the state admitting that the spirit soars in illimitable regions beyond the collectors of customs. It was Tom Paine, one the great voices of freedom in early America, who pointed out that a government could no more grant to man the liberty to worship God than it could grant to God the liberty of receiving such worship.

"The miracle which democracy has achieved is that while practicing many kinds of worship, we nevertheless achieve social unity and peace. And so we have the

impressive spectacle, which is with us always here in America, of men attending many different churches, but the same town meeting, the same political forum.

"Opposed to this democratic conception of man and of the human spirit is the totalitarian conception. The Axis powers pretend that they own all of a man, including his conscience. It was inevitable that the Nazis should try to deny the Christian church, because in virtually every respect its teachings are in opposition to the Nazi ideal of race supremacy and of the subordination of the individual. Christianity could only be an annoyance and a threat to Hitler's bid for power and his contempt for the common man.

"Today the struggle of Man's spirit is against new and curious shackles. Today a new monstrosity has shown itself on earth, a seven days' wonder, a new child of tyranny—a political religion in which the leader of the state becomes, himself, an object of worship and reverence and in which the individual becomes a corpuscle in the blood of the community, almost without identity. This Nazi freak must fail, if only because men are not clods, because the spirit does live. In the design for a new and better world, religious freedom is a fundamental prop.

"We of the nations united in war, among whom all the great religions are represented, see a triumphant peace by which all races will continue the belief in man, the belief in his elusive and untouchable spirit, and in the solid worth of human life."

In *United States v. Macintosh*, 283 U. S. 605, 634 (1931), the Chief Justice, in the course of a dissenting opinion joined in by Mr. Justice Holmes, Mr. Justice Brandeis and Mr. Justice Stone, said:

"The battle for religious liberty has been fought and won with respect to religious beliefs and practices,

which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field."

Blackstone says (*Commentaries*, Chase 3d ed., pp. 5-7):

"No human laws are of any validity if contrary to this [Divine law] . . . to be found only in the Holy Scriptures. . . . No human laws should be suffered to contradict these."

which is reflected by Judge Cooley (at page 968, *Constitutional Limitations*, *supra*):

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

"[pages 974-975] Whatever may be the shades of religious belief, all must acknowledge the fitness of recognizing in important human affairs the superintending care and control of the great Governor of the Universe, and of acknowledging with thanksgiving His boundless favors, of bowing in contrition when visited with penalties of His broken laws."

Freedom to worship Almighty God and especially the freedom to preach the gospel as an ordained minister of Jehovah God is recognized as a contributing factor to the foundation of a democracy. The right of freedom to preach as a minister is equally as important as freedom of the press and freedom of speech, if not more. This matter is well stated in the Constitution of the State of New Hampshire thus:

"As morality and piety, rightly grounded on evangelical principles, will give the best and greatest secur-

ity to government, and will lay, in the hearts of men, the strongest obligations to due subjection."

It is a known fact that public worship of Almighty God is a contributing factor to the vitality and life of the nation and renders more than the ordinary services of the citizenry to the Government in recognition of which the state governments and federal government have conferred special privileges upon the religious institutions and institutions of charity by complete exemption from all forms of taxation and conferring other special privileges. These institutions are hailed as conservers of the public morals and security and render indispensable assistance in the preservation of the public order.

By report of the Bureau of Census it appears that the great majority of the American people do not belong to any recognized religious organization nor attend a religious edifice for the purpose of hearing sermons. This condition establishes the great public need of individuals who are willing to volunteer their time and resources to take the study in the Scriptures into the homes of the people. As a convenience to the people thus situated, Jehovah's witnesses respond by carrying this message of the gospel of God's Kingdom from house to house and by special calls for the purpose of conducting Bible studies in the homes of the people, thus contributing greatly to the morale of the people of good will who desire to learn of and concerning God's THEOCRATIC GOVERNMENT of Righteousness—the only hope for mankind.

In the performance of that preaching obligation, appellant and all other of Jehovah's witnesses act under the command of Christ Jesus, and follow in His footsteps as did His apostles, who taught publicly and from house to house.—Luke 8:1; Acts 5:42; 20:20.

The guarantees of the constitutions of the several states and particularly the First Amendment—made applicable to the states by the Fourteenth Amendment—go further



than securing freedom merely for footstep followers of Christ Jesus to preach: such guarantees extend also to ALL religions and to worship of every kind or character, even pagan, demonistic or anti-God. The right to worship as one sees fit is thus secured against abridgment of all sorts and cannot be interfered with so long as it does not involve violation of the law of morals or immediately threaten the breach of the peace or overthrow of the government by force and violence.

While misapplying the rule, the controlling opinion of the court below states the freedom as follows: "... one may believe in and worship a Divine Being, or any ideal or thing the worshiper may think divine, under the name of Jehovah, or any other name; or, on the other hand, he is free to worship satan, a golden calf, any animal or thing, or any image of anything, real or imaginary." R. 130.

## B

Since appellant's method of preaching and way of worshipping Almighty God is by visiting the people at their homes and discussing the Bible with them, the foregoing freedom to worship is a basic issue in this case and it cannot be judicially declared irrelevant or not involved.

The court below, in the controlling opinion, although recognizing the rule of freedom of worship, stumbled and erred in applying it. In the case of *Taylor v. State*, Justice Alexander, dissenting, said: "I am constrained to believe that the equal division of opinion herein is not due to a divergence of views as to the applicable law, but rather to an application of the law." See *Taylor v. State*, companion case, Record page 164.

The controlling opinion defines Christianity, religion or worship so as to exclude therefrom the "apostolic" preaching and conscientious scruples held by appellants in these three cases (Cummings, Benoit and Taylor). In the *Taylor* case the court below says: "But in this case the right [of



freedom to worship] is asserted on a false assumption. There is not conflict between the right to worship, including the teaching of such worship, and loyalty to the flag and government of one's country. . . . Without undertaking a definition, the Christian religion, in its most important ultimate aspect, recognizes, has faith in and worships a Divine Being or Spirit—one Father of all mankind—who has the power to and will forgive the transgressions of repentants and care for the immortal souls of the believers, and which belief brings earthly solace and comfort to and tends to induce right living in such believers. Its primary object is a haven of rest after 'life's fitful fever is over.'" See Taylor Record, pages 156-7.

After thus defining religion and stating some of the doctrines and religious precepts of the recognized clergy—finding no support in the Bible—the court below brushes aside the Christian contentions raised by these appellants by saying: "It is a fallacy of the rankest kind to assume that loyalty to one's country and its flag is attributing to them any aspect of divinity or omnipotent power. . . . Jesus himself announced that almost two thousand years ago. When the spies, seeking to entrap him, asked 'Is it lawful for us to give tribute unto Caesar, or no?' He replied 'Render therefore unto Caesar the things which be Caesar's and unto God the things which be God's'. Luke 20: 22, 25." Taylor Record, page 157.

Adopting the language of the Supreme Judicial Court of Massachusetts in the case of *Nichols v. Lynn*, 297 Mass. 65, 7 N. E. 2d 577, the court below further said: "The term 'religion' has reference to one's views of his relation to his Creator, and to the obligations they impose of reverence for His being and character, and of obedience to His Will. . . . With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity,

and the morals of its people, are not interfered with. The flag salute and pledge of allegiance here in question do not in any just sense relate to religion. They are not observances which are religious in nature. They do not concern the views of any one as to his Creator. They do not touch upon his relation with his Maker. They impose no obligations as to religious worship. They are wholly patriotic in design and purpose. . . . The pledge of allegiance to the flag . . . is an acknowledgment of sovereignty, a promise of obedience, a recognition of authority above the will of the individual, to be respected and obeyed. It has nothing to do with religion. . . . There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance." Taylor, Record pages 157-8.

Of and concerning the views expressed in the controlling opinion in the *Cummings* case, Judge Alexander said: "By such view, the Court arrogates to itself the right to define religion for the citizen. But religion is essentially subjective. We are without right or power to say that withholding salute to the flag cannot relate to religion unless we mean our own religion." R. 138.

This rule is well expressed by Circuit Judge Parker in *Barnette v. West Virginia State B'd of Educ'n*, 47 F. Supp. 251, where he said:

"Courts may decide whether the public welfare is jeopardized by acts done or omitted because of religious belief; but they have nothing to do with determining the reasonableness of the belief. That is necessarily a matter of individual conscience. There is hardly a group of religious people to be found in the world who do not hold to beliefs and regard practices as important which seem utterly foolish and lacking in reason . . . and for the courts to attempt to distinguish between religious beliefs or practices on the ground that they are reasonable or unreasonable would be for

them to embark upon a hopeless undertaking and one which would inevitably result in the end of religious liberty."

See, also, to the same effect, *State v. Smith*, 155 Kans. 588, 127 P. 2d 518, and *Bolling v. Superior Court*, 133 P. 2d 803, decided January 29, 1943, by Supreme Court of the State of Washington.

It is not for the Court to pass upon the question as to whether or not the salute to the flag is regarded as a religious ceremony by Christians and thus violative of their consciences, nor may the Court determine whether that belief is reasonable or unreasonable. So long as such conscientious belief is not in conflict with the law of morality, it is the duty of this Court to protect Christians so believing in the full enjoyment of their rights. If courts are permitted to indulge in the question of reasonableness of beliefs and practices, the freedom guaranteed in the Bill of Rights would depend upon the individual and personal (i. e., private) view of judges as to the matter pending and thus would be ever changeable and the people would be utterly deprived of freedom to worship Almighty God. There is no persecution more galling nor which wounds more deeply than does "religious" persecution. A conscientious person feels that any unwarranted interference with his right to worship Almighty God according to his own choice is that kind of wrong which is hardest for him to bear.

In the *Taylor* case, the right of the constitutional liberty to preach is necessarily involved in considering the oral statements claimed to have been made by appellant Taylor, which were denied. It was during the course of a discussion by Taylor upon a Bible subject that they were alleged to have been made. These statements therefore would be admittedly made in the course of preaching and necessarily there is drawn into question the constitutional freedom to preach. Therefore it was improper for the court below to say that 'the question of religious freedom is not involved here.'

The statement contained in the booklet *God and the State*, that Jehovah's witnesses sincerely believe that for them to indulge in the formalism and ceremony of saluting any flag is a violation of God's specific command, is a part of a written dissertation of the various scriptures pertaining to this question, which supports the view of appellant Taylor and other of Jehovah's witnesses.

The quotation from the booklet *Refugees*, that all nations of earth are under the influence of the devil and his hosts of demons is necessarily connected with the preaching of the gospel because Christ Jesus when on earth made the same statement, as did also His apostles. In John 12:31, Satan is identified by Jesus as the "prince of this world". In John 14:30 he is again so identified by Jesus. When the devil offered to Jesus, in exchange for worship, the kingdoms of this world, Jesus did not dispute the devil's rulership over the 'present evil world'. (Matthew 4:8-10; Galatians 1:4; Ephesians 2:2) Paul the apostle of Jesus Christ referred to the devil as the "god of this world" (2 Corinthians 4:4), and to the devil and his spiritual allies as the rulers of this world: Ephesians 6:11, 12. At Revelation 11:15-19, concerning events at the end of the world, it says "the Kingdom of this world is become the kingdom of our Lord and of his Christ; and the nations were angry, and God's wrath has come."—*American Revised Version*.

What was true in the days of Jesus and His apostles is just as true of and concerning all governments that have existed since that time. There is no indication that Satan, invisible to human eyes, has abdicated his over-lordship and rulership of all such governments. Therefore it must be true that such continues to this very day, and to the final end of the "old" or present evil world. Had Jehovah, the God of justice, mercy, power and loving-kindness asserted His supreme power in supervising and controlling the governments of the world, they would have been administered wisely, justly and in righteousness, and unselfishly for the benefit of all the people. The facts which are undisputed

by the pages of secular history of all governments show that great injustice has been practiced against the people, that the governments have not been wisely administered, but special favors have been shown to a few while the majority have been oppressed and have suffered dire distress. "When the righteous are in authority, the people rejoice: but when the wicked beareth rule, the people mourn." —Proverbs 29: 2.

This condition that we now find in evidence is much the same as that under the mighty Nimrod, the first dictator, who gathered his subjects into cities and forced the development of commercialism which was used to enrich the political state and bear it up financially, augmented by recognized religionists of that day. (Genesis 10: 8-10) A strong-arm squad was organized and aggressive wars of conquest were carried on against neighboring nations. Men became awed at the power of the State and worshiped and feared it instead of God, even as the originator thereof did not fear God, but placed himself *before* God in importance. This caused the people to forget God and His Government, showing that the very first government established by man after the flood was set up under the influence of the devil and was totalitarian-controlled. This type of authoritarian or corporate state is now seen to exist in other lands and is rapidly moving forward to acquire *world domination* for suppression of the people's liberties and the re-establishment of the *papal* or "Holy" Roman Empire, a totalitarian government, subject to the same control as was the first corporate state under Nimrod.

The physical facts, together with the scriptural prophecy, should persuade any reasonable mind that Almighty God was not and is not the ruler of the "world" but such rule is exercised by Satan, the devil. (Ephesians 2: 2) This is the theme of the booklet *Refugees* (based entirely upon the Scriptures), distributed by appellant's companion, Taylor, as a means of preaching the gospel. It cannot, there-

fore, be said that this did not relate to his freedom to preach and worship Almighty God.

In the booklet *End of Axis Powers—Comfort All that Mourn*, complaint is made concerning the statement that Jehovah's witnesses are neutral in the controversy between the "king of the north" and the "king of the south", and keep themselves entirely aloof from the warring factions of this world. This is the identical position taken by those named in the long list of Jehovah's witnesses recorded in the Bible Book of Hebrews at chapter 11, all of whom "so-journed", "dwelling in tabernacles", looking forward to "a city which hath foundations [The THEOCRATIC GOVERNMENT], whose builder and maker is God", and who because of their staunch faith in that Government and its Builder suffered cruel mockings, were stoned and sawn asunder and persecuted as "strangers and pilgrims on the earth." These refused in all this to abandon their covenant obligations to Jehovah God and to participate in the controversies of the world as it then existed.

Objection is made by the State that *if* everybody in America took this position that the safety of the nation would be in danger. In answer to this it can be reliably stated that if ALL persons in America were Jehovah's witnesses, Almighty God Himself would fight their battles for them and protect His people as He did in times of old. Witness the destruction of the Midianites before Gideon and his band (Judges, chapter 7); the destruction in one night, by one of Jehovah's mighty angels, of 185,000 Assyrians encamped before the walls of Jerusalem. (2 Kings 19:35) Those who have faith in God immediately call to mind the act of God in destroying before His people the nations of Moab, Ammon and Edom, (2 Chronicles, chapter 20) and the destruction of the one-million-man army which attempted an assault against Judah under the faithful King Asa. (2 Chronicles, chapter 14) Many other instances are recorded in the Scriptures showing how JEHOVAH protected and fought for obedient ones in a covenant with Him.



The primary reason for the position thus taken by Jehovah's witnesses is that all their time, money and even life itself is dedicated to the cause of serving the Almighty God in the proclamation of His Kingdom of Righteousness as the only hope for mankind. Everything they own or possess (including their time and praise and worship) belongs to Jehovah God, the Almighty One. Should they not thus exclusively worship and praise Him by proclaiming His message given them to deliver, but rather indulge in the political controversies between the nations, God would surely destroy them as "covenant breakers".—Ezekiel chapters 3 and 33; 17: 18, 19; Amos 3: 2; Matthew 23: 38; Acts 3: 22, 23.

The booklet *End of Axis Powers—Comfort all that Mourn* contains this message of God's Kingdom as the only hope from the distress upon the people. It also shows that the axis powers will come to their end and none will help them. With millions of people not attending any church or religious organization and having no source of spiritual comfort, it is vitally necessary and of great convenience that they receive this message in their homes conveniently brought to them by Jehovah's witnesses.

In the case at bar, Cummings handed the jailer the book *Children* for the purpose of explaining his views on the Bible and to preach "this gospel of the kingdom" (Matthew 24: 14) and he quoted the Scripture Exodus 20: 3-5 as his answer to the inquiry of the jailer as to his refusal to salute the flag. The book *Children*, containing the statement that public officials have attempted to compel little children of Jehovah's witnesses to indulge in idolatrous practice of saluting the flag, contrary to God's commandments and expelling children from school for their refusal to violate their consciences, makes such statements on scriptural authority and it cannot be said that such did not relate to the conscientious beliefs and opinions of Cummings with respect to the obligation which he owed to His God and therefore must be accepted as preaching the gospel.



It is plain that certain members of the Supreme Court of Mississippi substituted their own individual, *private* opinion as to what constitutes worship for that of another individual, which those members had no right to do, and inflicted punishment by contemptuously casting aside the indisputable evidence showing that the activity in question involved freedom of worship.

The right to worship Almighty God includes the right to preach, to teach and to explain to others one's views. If this constitutional guarantee did not include this, then it would be impossible for one to "practice what he preaches". It would be impossible for an organization to gain members or to spread its message and extend its field of activity. Calling from house to house cannot be said *not* to be a proper manner of preaching the gospel, because that is the way Jesus and His apostles preached. One who follows in the footsteps of Jesus and the apostles must spread the gospel from house to house. (1 Peter 2:9, 21) If the people are met at the homes and the literature is thus distributed and any of such persons show an interest, it is proper and a part of that preaching activity to make a return visit and discuss these matters more extensively and explain any questions in the mind of the one called on, and to "comfort all that mourn". (Isaiah 61:2) Thus all persons of good will can take their stand with God's Kingdom and live. One should be always ready with an answer to any interested and inquisitive person to display the hope that is within him (1 Peter 3:15) by honestly and frankly answering all questions and explaining the Truth of God's Theocracy as the only means of obtaining peace, prosperity, happiness and everlasting life.—Acts 4:11, 12.

Since the days of the American Revolution it has ever been the judicial concept that the courts have no authority to say that a particular act of worship is not "religious" or a true act of worship of Almighty God, or that the particular activity does not involve a "religious" question. To say a "religious" question is not involved in this case and

companion Taylor and Benoit cases is to ignore all the evidence. The undisputed evidence shows that it was solely because they preached the gospel that they were prosecuted. The only question for the Court to determine, as Judge Parker said (*Barnette et al. v. W. Va. State B'd of Educ'n*, supra) is whether or not the practice presents a clear and present danger that some interest which the government can properly protect will be seriously endangered. This rule was well stated by Thomas Jefferson in the *Virginia Statute for Religious Freedom* (Virginia Code, Section 34) :

“that to suffer the civil magistrate to intrude his powers into the field of opinion, . . . is a dangerous fallacy which at once destroys all religious liberty’, and ‘it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order’.”

The Mississippi Supreme Court approached these tender, delicate questions involving the most precious of all civil liberties in a backward and improper fashion: because they themselves could not see that the salute to the flag involved a religious ceremony, they immediately concluded that there was no question of freedom of worship involved. In the performance of this task they did not follow the sage counsel of this Court in *Schneider v. State*, 308 U. S. 147, “*In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation.*”

How can a court determine the effect of the challenged legislation without weighing and appraising the facts and circumstances presented in the case? It was necessary for the court to determine whether or not any of the rights that could be protected by the state would be immediately invaded by the worshiping and preaching activity of Taylor, Cummings and Benoit. This the court failed and refused to do. Because the statute was nominally directed at sub-

versive activity the court below refused to consider the question of whether or not it had been applied to facts and circumstances which were themselves protected by the First and Fourteenth Amendments. It was the duty of the court below to determine whether or not the statute had been applied so as to abridge constitutional rights. *Concordia Fire Ins. Co. v. Illinois*, 292 U. S. 535, 545; *Oney v. City of Oklahoma City*, 120 F. 2d 861; *South Holland v. Stein*, 373 Ill. 472, 26 N. E. 2d 868; *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282; *Yick Wo v. Hopkins*, 118 U. S. 356, 373-374.

In determining this question the Supreme Court of Mississippi skipped over the matter of conscience entirely and disposed of the question by speedy conclusion that "the right is asserted on a false assumption", which the Court had no authority to do.

### C

**No abuse of the exercise of the right of freedom to worship Almighty God is shown by the facts so as to warrant an interference under the statute.**

It is not contended that the acts and conduct on the part of appellant involved a violation of the law of morals or imperiled the peace of the state or advocated the overthrow of the government by force and violence.

It must be conceded by all that none of the appellants, Cummings in this case and Taylor and Benoit in the companion cases, advocated any such thing. Therefore the case of *Davis v. Beason*, 133 U. S. 333, relied upon by the court below and that of *Reynolds v. United States*, 98 U. S. 145, which involved the practice of bigamy under the guise of religious belief, are not in point and do not support the conclusion of the court below. Since the record fails to disclose any evidence of the existence of circumstances, doctrines or practices that violate the law of morals, or imperil the peace and safety of the nation, the application of the statute here cannot be sustained.

## D

Speech and writings which contain opinion relating to interpretation and fulfillment of prophecy, the relation between the Creator and the creature and the duties imposed by conscience, should be given the fullest protection possible against interference by statute, so long as there is no clear and present danger of open violence, or a violation of the laws of property or morality.

It has been a fundamental rule of long standing that the people of this land can have and must have free discussion on any subject of public interest. This is more particularly true in the field of religion and worship of Almighty God than in any other, because men are born and raised in some particular religion and rarely give consideration to whether or not the doctrines taught therein find support in the Scriptures. They would spend their entire life in error were it not for the privilege of discussing and hearing discussed and reading literature upon the Holy Bible.

There are many different religions, but there is only one true worship of the Almighty God that is dictated in the Scriptures and it is the desire of every honest person to obtain the Truth with respect to the obligations which he owes the Creator, for this is the only way to obtain life. To worship means to serve. How can one serve and understand to serve unless he be enlightened? Because of the divergent creeds and doctrines taught by the various religious sects, all of which disagree and vary one from another, it is essential that the people be given the needed opportunity to hear the Truth, and it is incumbent upon God's servants in a covenant with Him to do so, to make such needful information available to those sighing and crying for righteousness.—Ezekiel 9:4; Psalm 97:11.

The rule that only a limited field of discussion was allowed with respect to matters pertaining to the Scriptures prevailed only during, and in days prior to, the Inquisition.

With the Reformation came enlightenment with press, speech and discussion and revolution against the narrow, stagnant ideas of darkness. In this condition "protestantism" was born and spread to other continents. That "protest", let it never be forgotten, was against *papal world domination*. Many sects arose and endured great persecution until they came to power, when the pendulum swung in the other direction and they became the persecutors of other minorities or "non-conformists". The British Isles were no exception. When "state religion" came to power in that land, it persecuted Catholics and others to the extent that many fled and came to the bleak shores of this continent and hewed out of the forests the beginning of this nation dedicated to the proposition that all men should be free especially with relation to the discussion of matters pertaining to the proper worship of Almighty God.

Because brave and noble men—real servants and witnesses of Jehovah—indulged in the criticism of the established religion in the days of the Inquisition and taught doctrines considered "seditious" and "subversive" by the Holy Roman Empire, they were killed, burned at the stake, excommunicated and tortured by every conceivable means known to the minds of demonized men, whose philosophy was that all who would not submit to their nefarious designs should suffer the severest penalties.

In the "days of darkness" and prevailing religious prejudice men feared "witches" and burned suspected old women both in Britain and in the Colonies. In 1692 a campaign against "witches" in and around Salem, Massachusetts, led to the arrest of hundreds of innocent persons, the hanging of nineteen and the pressing to death of another. It is the proper function of freedom of worship in order to free men from the bondage of fears that the very greatest latitude be given to liberty of expression, opinion, doctrine and precept, regardless of whether it touches on political, commercial or religious matters, otherwise the pulpit would become subject to the dictates of the state and thereby lead

to the dreaded union of church and state, contrary to the intentions of the founders of this nation.

Today in totalitarian lands no pronouncement dare be made from the pulpit that is out of harmony with the principles of regimentation, so the people can be kept in blindness and further oppressed and used as beasts of burden to maintain the corporate state. A government founded upon such principles and saddled upon the people under such conditions can last no longer than the tyranny and fear of man holds. Truth can never be injured whether it be on a matter of government, politics or the Bible, so long as liberty of expression is allowed. This same thought is well expressed by Milton in "Areopagitica"; blind though he was, he had a greater insight in all things affecting human rights—more than did many persons with good eyesight. (Mark 8:18) Of limiting freedom of worship he said: "Well knows he who uses to consider, that our faith and knowledge thrives by exercise, as well as our limbs and complexion. Truth is compared in Scripture to a streaming fountain; if her waters flow not in a perpetual progression, they sicken into a muddy pool of conformity and tradition. A man may be a heretic in the truth; and if he believe things only because his pastor says so, or the assembly so determines, without knowing other reasons, though his belief be true, yet the very truth he holds becomes his heresy. There is not any burden that some would gladlier post off to another, than the charge and care of their religion. There be, who knows not that there be? of Protestants and professors, who live and die in as errant and implicit faith, as any lay Papist of Loretto. . . .

" . . . And though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew truth put to the worse, in a free and open encounter? Her confuting is the best and surest suppressing. . . . For who knows not that truth is strong, next to the Almighty; she



needs no policies, nor stratagems, nor licensings to make her victorious, those are the shifts and the defenses that error uses against her power: give her but room, and do not bind her when she sleeps."

Witch hunting is no longer sanctioned. The suspicions and hatreds of Salem have ceased. Neighbors no longer inveigh against neighbors through fear of the "evil eye"—except in Mississippi. Among all the competing doctrines of the various conflicting sects of religion, the people must choose that which appears most acceptable to their consciences. They cannot make an independent choice as to any unless they be enlightened. They can only be enlightened as to the inconsistencies of these religious precepts through free worship and service of Almighty God, guaranteed to His servants who carry His message of Truth from house to house. When this is destroyed they have no such right. Almighty God says in Isaiah 1:18, "Come now, and let us reason together." There cannot be reason and discussion between neighbors if the population is terrified with the sedition statute staring them in the face that can be used to inflict severe punishment and internment as criminals for the exercise of their right of expression of opinion. This statute provides this useful instrument for those that would oppress the people. This reactionary move against liberal discussion could well result in the *banning of the Bible* and any Bible literature such as has been done in totalitarian countries, particular attention being drawn to Spain where 110,000 Bibles imported by consent of Franco's government from England in 1941, were seized and ground up to make cellulose. It is a known fact that hysteria seeks an avenue of change and distraction when the attention of the people is turned from the protection of civil liberties on the "home front" to the defense of the nation on the battle front. In such times there is an even greater reason to preserve inviolate these fundamental rights. In *De Jonge v. Oregon*, 299 U. S. 353, Mr. Justice Hughes said:



"These rights may be abused by using speech or press or assembly in order to incite violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that change, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

President Roosevelt in an address on December 15, 1941, declared: "We will not under any threat or in the face of danger surrender the guarantees of liberty our forefathers framed for us in the Bill of Rights. We hold with all the passion of our hearts and minds to those commitments of the human spirit."

The noble utterances of President Wilson at the beginning of the war with Germany are clearly recalled: "An unwillingness even to discuss these matters produces only dissatisfaction and gives comfort to the extreme elements in our country which endeavor to stir up disturbances in order to provoke government to embark upon a course of retaliation and repression. *The seed of revolution is repression.*"

The founding fathers saw fit to provide exemption for those that refused to take oaths and others who refused to remove their hats were tolerated. Why cannot this same liberality be allowed today to Jehovah's witnesses? If this law be sustained, then it is impossible for one constitu-

tionally to explain any matter of conscientious objection that he might have, based on proper grounds, to the doing, or the refusing to do any act. Under this statute one could easily be convicted for explaining the reason why he was a conscientious objector to military service and held in his possession a classification as such from the Selective Service System, and this in spite of the provisions of the Selective Training and Service Act concerning those so situated. There is no law requiring a person to salute the flag, but, in Mississippi, if one should explain the reasons of conscience felt in his heart and dictated by the law of Almighty God, as to why he could not so salute, he has violated the law and is subject to severe punishment for 'inciting disloyalty and creating an attitude of stubborn refusal to salute the flag'. The unreasonableness of the law is demonstrated in the fact that a person can be disloyal and not be prosecuted, one can be a conscientious objector and not be prosecuted, but if he were to discuss these matters with another person or were to refuse to salute the flag when requested to do so, he could very easily be convicted.

The *American* attitude on all such matters of conscience is well expressed by General Washington, in a letter to General Lafayette in connection with conscientious refusal of officers of a Virginia brigade to take an oath of allegiance to the Union, where he said:

"As every oath should be a free act of the mind founded on the conviction of the party of its propriety, I would not wish in any instance that there should be the least degree of compulsion exercised, or to impose my opinion in order to induce any to make it of whom it is required. The gentlemen therefore who sign the paper will use their own discretion in the matter and swear or not swear as their conscience and feelings dictate."—Sparks, *Life of Washington*, Vol. 5, p. 366.

Mr. Justice Reed, in *Jones v. Opelika*, 316 U. S. 584, said:

"To proscribe the dissemination of doctrines or arguments which do not transgress military or moral limits is to destroy the principal bases of democracy, —knowledge and discussion. One man, with views contrary to the rest of his compatriots, is entitled to the privilege of expressing his ideas by speech or broadside to anyone willing to listen or to read. Too many settled beliefs have in time been rejected to justify this generation in refusing a hearing to its own dissentients."

In Colonial days the Quakers were familiar with the rigors of persecution. They were unmercifully hounded from place to place. President George Washington was not ashamed to assist their cause. In a communication he declared that liberty of worship belonged to them as a *right*, and not a mere privilege grudgingly tolerated. He said:

"Government being, among other purposes, instituted to protect persons and consciences of men from oppression, it certainly is the duty of rulers, not only to abstain from it themselves, but according to their stations to prevent it in others. The liberty enjoyed by the people of these States of worshipping Almighty God agreeably to their consciences is not only among the choicest of their *blessings* but also of their *rights*."

—*Old South Leaflets*, No. 65, p. 7.

We do not contend that freedom of worship protects one who, under the guise of "religion", licenses himself to violate all the laws that are right and just, but we do say

that it is the law, and should be announced by this Court to be the law, that any speech which has as its purpose a discussion of the Bible prophecies or the religious doctrines and precepts of men, or anything pertaining to conscience, should be granted the most extensive protection that is permissible in an ordered society. Of course the fraudulent use of religion as a subterfuge shield to carry on subversive activity presents a different question, but here it cannot be contended that the speech, writings, beliefs and practices do not rest upon the most sincere bases.

How can a Christian minister of the gospel discharge his duty which he owes to Almighty God and to the people in the State of Mississippi without being branded a criminal? He cannot conscientiously do so in that state, although, as one of the American states, it is her duty to protect Christians within her boundaries and to foster and aid the preaching of the gospel of God's Kingdom. None of the founding fathers intended to establish the United States Government or the government of any state as a substitute for God's Kingdom. All such men had faith and confidence in Almighty God and in His promises and looked forward with earnest expectancy to the establishment of God's Kingdom and daily prayed the prayer that is on the lips of every true Christian: "THY KINGDOM COME. THY WILL BE DONE, AS IN HEAVEN, SO IN EARTH." (Luke 11:2) They considered the American government as a haven and a place of refuge from the oppressors until the day of Armageddon be past, when the people of earth will be liberated forever from the perpetrators of oppression by "the Sun of righteousness [arising] with healing in his wings" and establishing the divinely promised Kingdom. (Malachi 4:2; Luke 11:2) This government ceases to be such a haven when the officials are allowed to convict the advocates of God's Righteous Theocratic Government of the crime of sedition for declaring the nearness thereof and advising the people how they may obtain its benefits.

**E**

**There is no evidence that the activity of the appellant in preaching the gospel constituted a clear and present danger that any of the things aimed against by the statute will result.**

A search of all the sedition cases will fail to reveal one that is based on evidence so slight, trivial and weak as this one. If appellant had been the terrible revolutionist and seditionist he is pictured to be by the so-called "peace officers" that had him in custody, it seems that witnesses would have been produced to testify as to his activity, but not one person was produced against him, except the police officers who obtained all their evidence from questioning the accused while in custody and who were present at the time the flag-salute ceremony at the preliminary hearing was held. If appellant was guilty of sedition, then he committed it while in the custody of the police officers. The undisputed evidence is that the police officers who testified against him as to the statements made said that they were not influenced by any statements made or any statements contained in the literature. Refusal to salute a flag, even in the presence of the police officers or a crowded courtroom, does not present a clear and present danger that others will become disloyal or that others would assume an attitude of stubborn refusal to salute the flag. If anything, such would create an attitude of resentment and a clear and present danger that the appellant would be severely injured or killed, by mob violence. The usual custom when one of Jehovah's witnesses refuses to salute the flag is that he will be mobbed and beaten by the frenzied, pseudopatriotic flag-wavers demanding the salute. There is no showing that anyone was influenced by any statement alleged to have been made by Clem Cummings. There is no showing by any witness that the statements contained in the literature caused them to have an attitude of stubborn refusal to salute the flag or that it tended in the slightest or remotest degree to

create such an attitude on the part of the reader. The undisputed evidence is overwhelmingly to the contrary.

It cannot be presumed that the literature or the oral statements made would reasonably tend to produce such an attitude or create disloyalty, for to allow the judgment of conviction to rest upon a presumption would be to presume the appellant guilty, which is contrary to the system of American jurisprudence. The State wholly failed to establish any evidence whatsoever as to clear and present danger.

Jehovah's witnesses do not go around talking about the flag or raising the issue, but when the issue is raised by others in the form of an inquiry, reason, honesty and justice would dictate that Jehovah's witnesses cannot be convicted of sedition for describing that their attitude toward such salute to the flag is based on the Scriptures. If one can be convicted of sedition for distributing a book of the character in question—*Children*—then by force of reason one could easily be convicted for distributing the Word of Almighty God, the Bible, and especially if he pointed out the scriptures on vital subjects. If one pointed out Acts 4: 19, 20, 29; 5: 29, 32, he would make himself liable to prosecution under the sedition statute of Mississippi because such scriptures would reasonably tend, according to the prosecution and the State, to cause disloyalty to the government. The reading or calling attention of another to John 15: 19; 17: 14-16 and 18: 36 could also be made the subject of an indictment and judgment, internment the preacher for the duration of the war, not to exceed ten years, because inciting disloyalty to the nation. The reading of Daniel 2: 44 could 'reasonably be calculated to encourage violence, sabotage or disloyalty to the government' because such scripture furthers the establishment of God's Kingdom. Also the repetition of the Lord's Prayer could be held seditious for the same reason. *According to the State of Mississippi, the Bible is seditious.* Deuteronomy 5: 9 and Exodus 20: 3-5, according to that state, constitute seditious utterances against the gov-



ernment, *when read or uttered in that state*, because they create an attitude of stubborn refusal to salute the flag. The extreme ends to which the people may be swept away from liberty by this statute which depends for its enforcement upon the whim and opinion of the party in power, is manifest. There are many things today that could be regarded as seditious under this statute, which present a far greater danger to the safety of the nation than does the explanation of the reasons why Jehovah's witnesses refuse to salute the flag. For instance, many of the states, in their constitutions, provide that no person shall be compelled to render military service or bear arms, contrary to his conscience. Such states include Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Missouri, New Hampshire, New York, North Carolina, Oregon, South Carolina and Tennessee. The reading of such constitutions in the State of Mississippi could easily be held seditious under this statute.

It is the uniform custom of all courts to require the taking of an oath, but universally—by custom or statute—specific exemption has been made to dispense with swearing and permitting a person to substitute some form of affirmation acceptable to his conscience.

We call attention to the fact that the Selective Training and Service Act of 1940 provides for the specific exemption of conscientious objectors, but if one were to explain the reason for taking his position as a conscientious objector under the Act in the State of Mississippi, he could easily be convicted for sedition.

There are many thousands of men, such as Quakers, Mennonites, and others that advocate and teach conscientious objection to military training and service. The Quakers could easily be *outlawed* in the State of Mississippi by the use of this statute in the same manner as have been Jehovah's witnesses.

In *United States v. Schwimmer*, 279 U. S. 644, 654, this court upheld the denial of citizenship because of refusal to



bear arms for conscience' sake. This decision was by a divided court. Some of the justices dissenting included Mr. Justice Holmes, who stated:

"Some of her [Rosika Schwimmer's] answers might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate. . . . *The Quakers have done their share to make the country what it is . . . and . . . I had not supposed hitherto that we regretted our inability to expel them because they believe more than some of us do in the teachings of the Sermon on the Mount.*"

Historically it is true that there have ever been dissentients amongst the people who possessed beliefs that were "peculiar" and objectionable to the majority, but, in spite of this, the nation has accommodated the consciences of such individuals, knowing that to begin abridging the rights of the minority in respect to the matters of conscience meant opening the doors to additional and further steps that would finally assail the rights of larger minorities until all constitutional liberties would be chiseled away.

There is no weight that can be given to the argument as to whether or not the entire nation—if Jehovah's witnesses be permitted to continue to exercise their constitutional rights—would refuse to salute the American flag. That is a matter that is so vague and indefinite and so improbable, both from a practical and a Scriptural standpoint, that it cannot be contended that such a contingency would present a clear and present danger. But, be that as it may, Jehovah's witnesses have just as much right to persuade, if they can, the entire nation to see their way of thinking, as do the big, "recognized" religions of "Christendom".

The matter of conscience, and whether the people will follow after this religion, or that, or will practice true Christianity, is a matter to be determined exclusively by the people, and the fact that there is a possibility that the religious complexion of the people may change from time to time cannot be considered as presenting a clear and present danger within the meaning of a sedition statute.

If the advocacy of political principles by worldly men, who have an axe to grind, in favor of some theory of world recovery or world domination, such as *Communism*, *moral rearmament*, etc., which entirely ignore the word of Almighty God, are allowed, so long as there is no showing of clear and present danger that there will be resort to force and violence to overthrow the government, then with greater force of reasoning Christians who advocate the interpretation of the words of Jesus: "Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's" so as to allow allegiance to Almighty God and an agreement to obey all the laws of the land not conflicting therewith and which do not require them to violate the Supreme Laws of Almighty God, should likewise be accommodated by the Constitution. A far greater danger is presented in allowing the constitutional rights to communists than could ever be true from accommodating the consciences of true Christians.

The Supreme Court of Mississippi has construed the statute so as to allow a conviction. If any person should, upon reading the Bible or Bible literature distributed by appellant, at any time in the future reach the same conclusion with respect to the salute of the flag as appellant, regardless of how many years intervene from the time the book is read until the opinion is formed, the person thus distributing the literature or speaking the words could be convicted under the statute.

It is not reasonable to argue that the presence of Jehovah's witnesses in the land constitutes a clear and present danger. Jehovah's witnesses are exceedingly unpopular,

despised and hated of all nations, including the United States, as the records abundantly attest. This is not unusual or surprising. Jesus Christ's apostle Peter said, "Think it not strange concerning the fiery trial which is to try you, as though some strange thing happened unto you; but rejoice . . . If ye be reproached for the name of Christ, happy are ye." (1 Peter 4: 12-14) John, another apostle, said, "Marvel not, my brethren, if the world hate you." (1 John 3: 13) And their Master and great Example said, "Remember the word that I said unto you, The servant is not greater than his lord. If they have persecuted me, they will also persecute you; if they have kept my saying, they will keep yours also." "But beware of men: for they will deliver you up to the councils, and they will scourge you in their synagogues; and ye shall be brought before governors and kings for my sake, for a testimony against them and the Gentiles." "Blessed are they which are persecuted for righteousness' sake: for theirs is the kingdom of heaven. Blessed are ye, when men shall revile you, and persecute you, and shall say all manner of evil against you falsely, for my sake. . . . for so persecuted they the prophets which were before you." —John 15: 20; Matthew 10: 17, 18; 5: 10-12.

It is notorious that Jehovah's witnesses are placed, by public-press misrepresentation and other religious propaganda, in a position which is very revolting and sickening to others. They have been made to appear as something to be avoided, something with which the people should have nothing to do, except to try to stamp them out. The misrepresentation on the flag-salute issue and *false* charge that they are carrying on a "hate campaign", that they are communists, fifth-columnists, unpatriotic and advocating subversive doctrines, and the *false* charge that they set themselves up as the law and as self-appointed interpreters of the law, and other such malicious charges have succeeded in making the public appearance and presence of Jehovah's witnesses odious and very undesirable

in the eyes of the "high and mighty" of this world and their political, commercial and religious allies.

This "plague" does not come upon them from God, but is a smear campaign through demonized, uninformed and misguided men and is added to extreme pressure constantly put upon Jehovah's witnesses because of keeping integrity to Almighty God. As Christ Jesus was hanged between two thieves for a publicity effect, so the enemies of Jehovah's witnesses hold them before the people as criminals to satisfy the "holier than thou" crowd who use "good words and fair speeches" to "deceive the hearts of the simple" unsuspecting ones. (Romans 16: 18) Striking with such heavy blows of libel and bitter assaults, to say nothing of mob violence, certainly places Jehovah's witnesses in the eyes of the public as a very much unwanted and undesired group of Christians. (Matthew 10: 22; Zephaniah 2: 1) As in the days of the early disciples, Jehovah's witnesses today are spoken against. "As concerning this sect, we know that every where it is spoken against." (Acts 28: 22) They are just as unpopular as the Christians in the days of the Roman Empire.

It may be contended by the State that because Jehovah's witnesses are hated and persecuted there is a clear and present danger of injury—because they persist in preaching the Gospel—at the hands of the rabble element who seek to do them violence and that such condition presents a clear and present danger warranting the internment of Jehovah's witnesses "for the duration". In other words, the State argues that it is necessary to take Jehovah's witnesses into *protective custody*.

Mob violence is by no means a modern thing. It has ever been the practice of the religionists and those who hate Light and Truth to resort to violence when their commands are not complied with. A mob gathered outside the house of Lot in Sodom and threatened the destruction of the house and inhabitants because Lot protected his unknown visitors. (Genesis 19) The faithful apostle Paul, who followed the

rule, "We ought to obey God rather than men," was mobbed, beaten and stoned and otherwise persecuted on numerous occasions for refusal to deviate one bit from his covenant with Almighty God. (2 Corinthians 11:25-28; 6:5; Acts 16:22, 23; 13:50; 17:5; 21:30, 31; 14:19) See also 2 Kings 6:13-18; Genesis 4:8; Numbers 14:6-10.

We submit that such arguments do not constitute clear and present danger within the meaning of the Constitution because statutes of this sort when applied to the lawful and proper exercise of press activity are unconstitutional. See the case of *Dearborn Pub'g Co. v. Fitzgerald*, 271 F. 479, where the court said:

"If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and *not forbid* innocent persons to exercise their lawful and equal rights. . . .

"If defendants' acts were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed. . . ."

The Court can take judicial notice of the above facts and readily reach the conclusion that there is no clear and present danger that the vast majority of the American population will immediately be affected by the activity of Jehovah's witnesses and thereby assume an attitude of stubborn refusal to salute the American flag. *This dreadful misrepresentation makes it impossible for Jehovah's witnesses to make a public defense of themselves except through their own publications*, and certainly it cannot be claimed to be seditious for Jehovah's witnesses to make this de-

fense of their own name and activity as servants of Jehovah God (Isaiah 43:10-12) before those persons of good will among the people who desire and have the right to know the Truth.

Certainly the making of this defense does not present a clear and present danger nor is it the doing of any act which is within the prohibition of the statute.

## F

The oldest cases in point recorded by the Eternal Judge in the volume of His Word, show that the words spoken and printed, here drawn in question, are proper and right and are entitled to protection because this is a Christian nation binding itself to recognition of the supremacy of the Law of Almighty God as expressed in the Bible.

Under the old Roman Law, sedition was considered as treason. It was known as *lese majestas*. The term "sedition" emanates from the Latin word *sed*, which means "aside", and the word *ire*, "to go," and means "a going apart" or "dissension" in the law, "an attempt to disturb the tranquillity of the state". There are many sedition cases recorded against the Christians under the Roman Law, but before we discuss such, it would be well to consider the earlier sedition case against Jehovah's servant Jeremiah.

That prophet was accused of treason and sedition against the government of ancient Jerusalem, the capital city of Judah, because he called their attention to their derelictions at the command of Jehovah God. He declared the judgments of the Lord against the "city called by my name", as being against the Lord and controlled by the Devil and violating the commandments of the Lord and subject to destruction at the hand of the Lord unless they repented. This greatly stirred up the officials—prophets, priests and princes—of that government and they declared, "This man is worthy to die; for he hath prophesied against this city." Jeremiah, in the presence of his accusers, refused



to discontinue the proclamation of Jehovah God's message and said, "Jehovah sent me to prophesy against this house and against this city all the words that ye have heard. Now therefore amend your ways and your doings, and obey the voice of Jehovah your God; and Jehovah will repent him of the evil that he hath pronounced against you. But as for me, behold, I am in your hand: do with me as is good and right in your eyes. Only know ye for certain that, if ye put me to death, ye will bring innocent blood upon yourselves, and upon this city, and upon the inhabitants thereof: for of a truth Jehovah hath sent me unto you to speak all these words in your ears." Jeremiah was given a suspended sentence, and later on imprisoned by the king for continuing his prophetic work, but even in prison he continued to utter the words commanded by God for him to deliver. On release he ceased not from proclaiming the judgments, and on the insistence of the princes he was cast into a miry dungeon where he was denied bread and water, but from whence he was delivered from the hands of his enemies by the hand of Jehovah.—Jeremiah, chapters 25, 26, 32, 33, 38.

When Christ Jesus was on earth he advocated God's Kingdom as the only hope of the world and prophesied that by His faithfulness He would be the king of God's Theocratic Government. Because of His preaching, the religionists conspired to have Him killed for making seditious utterances. They sent their spies to trap Him. (Mark 12: 13-17) Realizing the conspiracy, His astute answer to the spies frustrated the conspiracy for a time. Finally the religionists and allies took the law into their own hands and, in a mob, seized Him and took Him to Pilate, after having given Him the "third degree" in the priest's house. "And they began to accuse him, saying, We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying, that he himself is Christ a King. And Pilate asked him, saying, Art thou the King of the Jews? And he answered him and said, Thou sayest it. . . . And they were



more fierce, saying, He stirreth up the people, teaching throughout all Jewry, beginning from Galilee to this place." (Luke 23:2-5) After a preliminary examination Pilate found that there was no evidence to hold Christ Jesus, but the Jews in a great multitude, led by the clergy, demanded that Christ be crucified for sedition and that the murderer and seditious Barrabas be released from prison as was the custom at that period of the year. (Luke 23:4, 13-23) "And from thenceforth Pilate sought to release him: but the Jews cried out, saying, If thou let this man go, thou art not Caesar's friend: whosoever maketh himself a king speaketh against Caesar." (John 19:12) Pilate thereupon submitted to the religionists, because of the pressure exerted, found Christ guilty of sedition, sentenced him to be crucified between two thieves (Luke 23:13-25), while the chief priests and officers and rabble element cried, "We have no king but Caesar".—John 19:15.

Immediately thereafter the apostles and disciples were falsely accused of various charges and repeatedly arrested and brought before the courts for preaching the gospel and they, persistently following the course mapped out for them by Christ Jesus, continued to say, "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." They were thrown into prison several times in Jerusalem because they advocated God's Kingdom and declared "We ought to obey God rather than men." Many were imperiled, imprisoned and some killed, including Stephen.—Acts 7.

It was during this time that Saul, a lawyer, and renowned Pharisee (Acts 26:5) and commissioned prosecutor of the Christians, was miraculously converted to be a follower of Christ. (Acts 8 and 9) While on a preaching tour of the Roman Empire, Saul (now named Paul) was seized and taken before the magistrates at Philippi for causing 'exceeding trouble' to the religionists in the city 'teaching customs not lawful to receive and contrary to the Roman law'. Paul and his companion were found guilty, stripped

and lashed and cast into prison and placed in stocks, for their 'seditious' utterances. When the magistrates learned that Paul was a Roman citizen they sent word to have him released "quietly" and for him to leave the city.—Acts 16.

In Thessalonica the Jews raised up against Paul a great mob and caused an uproar throughout the city and assaulted the house where Paul was staying and took him before the rulers and made charge as follows: "These that have turned the world upside down are come hither also; whom Jason hath received: and these all do contrary to the decrees of Caesar, saying that there is another king, one Jesus." (Acts 17: 6, 7) Paul proceeded to Berea, where the mobsters of Thessalonica came to stir up the people against the work of Paul.—Acts 17: 13.

In Achaia, where Gallio was the provincial governor, the Jews interfered with Paul's preaching activity and took him before Gallio and charged him with insurrection and sedition. On the trial at the close of the state's evidence, Gallio, presiding as magistrate, threw the case out of court because it developed that it was not sedition but a matter of the Bible and God's Law to which the accusers bound themselves in claiming to be subject to it. Gallio said: "If it were a matter of wrong or wicked lewdness, O ye Jews, reason would that I should bear with you: but if it be a question of words and names, and *of your law*, look ye to it; for I will be no judge of such matters. And he drave them from the judgment seat."—Acts 18: 12-16.

On his arrival in Jerusalem, a great tumult was caused by his enemies and he was given permission to speak in his defense at some length before the crowd and they became greatly enraged, and loudly cried, "Away with such a fellow from the earth: for it is not fit that he should live." (Acts 22: 22) They had previously voiced their objection to his preaching the gospel, when they "stirred up all the people, and laid hands on him, crying out, Men of Israel, help: This is the man, that teacheth all men every where against the people, and the law, and this place." (Acts 21: 27, 28) There-

upon Paul was arrested, and because he knew he could not obtain a fair trial, due to prejudice, he demanded a change of venue by claiming the benefits of his Roman citizenship. He said to the centurion, "Is it lawful for you to scourge a man that is a Roman, and uncondemned?" (Acts 22: 25) When word of this reached the chief captain, it was decided that they should be careful how they dealt with the legal rights of Paul and held him for preliminary hearing before the council and then sent him to Caesarea to be heard by Felix the Roman governor. When it developed, before Felix, that the matter involved a question of the Law of Almighty God, with which he could have nothing to do, the religious high priest employed an orator and politician, Tertullus, as special prosecutor of Paul before the governor for the purpose of forcing the charges through to conclusion. Tertullus said, "For we have found this man a pestilent fellow [*margin*, a plague], and a mover of sedition among all the Jews throughout the world, and a ring-leader of the sect of the Nazarenes." (Acts 24: 5) Felix was succeeded by Festus, as governor, who attempted to persuade Paul to have his case tried in Jerusalem. "Then said Paul, I stand at Caesar's judgment seat, where I ought to be judged: to the Jews have I done no wrong, as thou very well knowest. For if I be an offender, or have committed any thing worthy of death, I refuse not to die: but if there be none of these things whereof these accuse me, no man may deliver me unto them. I appeal unto Caesar. Then Festus, when he had conferred with the council, answered, Hast thou appealed unto Caesar? unto Caesar shalt thou go." —Acts 25: 1-12.

While Paul was in bonds under Festus, King Agrippa came on a visit and Paul explained to him concerning his conversion and the details concerning the gospel that he was now preaching. He was thereafter sent to Rome aboard a boat sailing for Italy.—Acts 26: 1-32; 27: 1.

At Rome, pending the disposition of his appeal, Paul was given partial liberty. "And Paul dwelt two whole years

in his own hired house, and received all that came in unto him, preaching the kingdom of God, and teaching those things which concern the Lord Jesus Christ, with all confidence, no man forbidding him." (Acts 28: 30, 31) Paul was ultimately discharged by Caesar and acquitted of the crime of sedition and continued to preach the gospel without compromise to the day of his death.—2 Timothy 4: 16, 17, 6-8.

His life course demonstrates that he 'rightly divided the word of truth' and 'rendered the things that were Caesar's to him, but the things that were God's to none other but God'. This shows that even the Roman Empire, authoritarian though it was, refused to surrender the rights of its citizens, prized above all other heritages of the day and thus guaranteed citizenship as a bulwark against religious prejudice.

We submit therefore that in this *land of the free and the home of the brave* where citizenship is reputed to carry many more privileges, immunities and rights than in any other nation under the sun, the courts should be as liberal toward true and faithful Christians as the Roman government was to the faithful apostle Paul. Indeed, Mr. Justice Jackson, speaking for this Court, in *Edwards v. California*, 314 U. S. 160, 182-186, said: "The power of citizenship as a shield against oppression was widely known from the example of Paul's Roman citizenship which sent the centurion scurrying to his higher-up with the message: 'Take heed what thou doest: for this man is a Roman.' I suppose none of us doubts that the hope of imparting to American citizenship some of this vitality was the purpose of . . . the Fourteenth Amendment." In that the Justice recognizes the acts of the apostle Paul as worthy of approval by this Court.

If this same message preached by the apostle was not considered by the highest Roman court as sedition, then with greater force of reason it must be said that the same message proclaimed in this day does not constitute sedition and unlawful conduct of such character as warrants denial of rights, privileges and immunities of citizenship secured

under the Fourteenth Amendment against abridgment by the state. The reason that the Roman government did not allow the practice of that faithful representative of Jesus Christ to be proscribed was because he had not abused his privilege of citizenship and he had stayed entirely within the bounds of the Scriptures. The high tribunal held that inasmuch as the controversy between Paul and his accusers depended upon the construction and application of God's Word, the Bible, the Roman courts would not lend themselves to the prosecution; that such courts would intervene to protect the rights of a Roman citizen. Paul denied that he was guilty of sedition and in answer to the charges said: "And they neither found me in the temple disputing with any man, neither raising up the people, neither in the synagogues, nor in the city: neither can they prove the things whereof they now accuse me."—Acts 24: 12, 13.

In *Holy Trinity Church v. United States*, 143 U. S. 457, this Court declared in plain terms that the United States "is a Christian nation". The United States has always recognized the law of Almighty God as supreme; that His law is superior to the law of the State. In that opinion Mr. Justice Brewer, after a review of the authorities and history, among other things said: "These and many other matters which might be noticed add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation."

Judge Cooley says in this connection: "Nor, while recognizing a superintending Providence, are we always precluded from recognizing also, in the rules prescribed for the conduct for the citizen, the notorious fact that the prevailing religion in the States is Christian. . . . It is frequently said that Christianity is a part of the law of the land."—*Constitutional Limitations*, 5th Ed., Vol. 2, pp. 975, 976.

In order to show this Court that the facts in the cases at bar—Cummings, Benoit and Taylor—are identical with the facts in the cases of the Lord Jesus Christ and of His

apostle Paul, we compare now the doctrines advocated by Jesus and Paul with those that are claimed here to be seditious and show thereby that the case of Paul is directly in point and controlling because the facts and charges are the same.

We consider first the objection to the doctrine preached by appellants raised by the court below:

" . . . Appellant and his co-workers are going about the country and into the homes of the people, of low and high degrees of intelligence, and all races, advocating disobedience to all laws and disrespect for and disloyalty to all governments, if perchance the particular law or the nature of the government in his opinion is not in accord with Theocracy. . . .

"The doctrine is preached by this appellant that the laws of the land should not be obeyed if they conflict with what the believer thinks is the law announced by Jehovah. This would sanctify the reasons for disobeying all human law, regardless of the soundness of the reasons, selecting passages here and there from the Bible, and lifting them out of their context and setting to support the belief." Taylor Record, pages 156, 158.

The controlling opinion relies upon the statement of the Lord Jesus, "Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's." (Luke 20:25) In this matter the court below has indulged in *private* interpretation of the Scriptures, which is 'wresting the word of God'.—2 Peter 3:16.

Here let it be borne in mind that by thus invoking the words of Christ Jesus and relying upon the Bible as authority, the Supreme Court of Mississippi judicially subjects and binds itself to and by all other commands contained in the Bible.

Christ Jesus knew that He was confronted by His enemies who were sent to trap and 'frame' him in the same



manner that the complaining witnesses in the Taylor case were used to trap Taylor. Jesus answered their question with a question and followed that with the statement, "Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's." Jesus did not say and he did not mean that Christians should submit to every decree of Caesar, but rather that God's laws were supreme and that the Christian would obey all laws of the land that were not in conflict therewith.

The Supreme Court of Mississippi, in effect, *privately* (i. e., for its own purpose, instead of for the Creator's purpose) interprets and changes the language of Jesus to say: 'Render unto Caesar the things that are Caesar's AND UNTO CAESAR THE THINGS THAT ARE GOD'S.' In this instance the court below proves itself guilty of that whereof it accuses the appellants, to wit, "selecting passages here and there from the Bible, and lifting them out of their context and setting to support the belief."

The life course of Christ Jesus in preaching the gospel under adversity and persecution clearly indicated how He interpreted that statement to mean that God's Law was Supreme. This He proved by refusing to submit to decrees of Caesar. Let it here be well noted that the court below overlooked the fact that the very charge brought against Jesus when He was on trial was "forbidding to give tribute to Caesar". (Luke 23: 2) Because Jesus taught the Truth, refusing to yield to the dictates of Caesar, The State, which would cause Him to violate His conscience, He was accused of sedition, convicted thereof on perjured testimony, sentenced to hang and was hanged on a tree, giving up His life. It is authoritatively said that no prophecy is of any *private* interpretation. (Genesis 40: 8; 41: 16; Deuteronomy 29: 29; Daniel 2: 19-22, 28, 47; 2 Peter 1: 20) By recording in the Bible the course of action of His faithful servants and witnesses, *Almighty God has interpreted* the commands of His own Laws, so as to remove any doubt as to the course of action to be taken by true Christians. The apostles con-



sistently emphasized the Supreme Law of God when they said to the courts: "We ought to obey God rather than men" (Acts 5: 29) and "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." —Acts 4: 19.

There is no intimation in the evidence that any of the appellants told anyone to disobey any law or showed any disrespect to the government or advocated disloyalty. This conclusion of the court below is manifestly based upon the fact that the appellants testified that they could not discontinue preaching the gospel because to do so would be a violation of God's Law, which commanded them to preach and that, since God's Law is Supreme, they must be obedient thereto and suffer the consequences inflicted by the State.

The Court below says this is treason and sedition. The attitude thus taken by Jehovah's witnesses is identical with that taken by Christ Jesus and His apostles who, under similar circumstances, insisted that their obedience was FIRST to Almighty God, 'We must obey God rather than men.' There is no evidence that Jehovah's witnesses refused to obey any law *except* the unconstitutional demands of their persecutors to discontinue distribution of the literature, to salute the flag and to stop preaching the gospel; but such commands and unreasonable demands are *not laws*.

It is here that demands of men and the Law of Almighty God conflict. However, the "law" of man in this instance must yield to the commandments of Almighty God, primarily because God's Law is Supreme, secondarily because the "law" under which the commands were given is unconstitutional.

Jehovah's witnesses always obey God's Law, regardless of the consequences. But this is neither sedition nor can it be considered as advocating the overthrow of the government, disloyalty or any of the evils condemned by the statute. If so, Mr. Justice Blackstone and Judge Cooley, relied on as authority by jurists the world over, could be prosecuted if they were alive today and attempted to distribute their respective works on constitutional law in the State

of Mississippi. Mr. Justice Blackstone said that God's law was supreme and, among other things, declared: "No human laws are of any validity if contrary to this [the Divine Law] . . . to be found only in the Holy Scriptures. . . . No human laws should be suffered to contradict these." (Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7) See also Cooley, *Constitutional Limitations*, 8th ed., p. 968.

Mr. Justice Brandeis declared, in his concurring opinion in *Whitney v. California*, 274 U. S. 57, that even the advocacy of the violation of law did not constitute and could not be considered as treason or sedition, and such advocacy could not and did not present a clear and present danger permitting punishment, unless in connection therewith immediate force and violence was advocated.

In relation to the obedience to the laws of the land as compared with the laws of Almighty God, Jehovah's witnesses stand in the same position as do the Lord Jesus Christ and His apostle Paul and others, when on earth, who blazed the trail for Jehovah's witnesses to follow ever thereafter. They considered themselves as ambassadors of the Creator in a foreign land and that their allegiance was primarily to Jehovah God, which is demonstrated in consistent and persistent preaching of the gospel of God's Kingdom, the establishment of which is the only hope of the world. These men consistently obeyed all laws of the land wherein they dwelt that did not conflict with the Law of Almighty God and did not cause them to violate their conscience or covenant with their Maker.

In the indictment in the Taylor case complaint is made that the booklets *Refugees* and *End of Axis Powers—Comfort All that Mourn* are seditious because they state that the kingdoms and nations of this world are under the control of the Devil, and that such world is composed of political, ecclesiastical and commercial elements which will be destroyed at Armageddon. The Bible plainly says, at Revelation 16:14, 16, that the 'spirits of devils go forth unto the kings of the earth and of the whole world, to gather

them to the battle of the great day of God Almighty at Armageddon'—thereby showing invisible demon powers (i. e., "spirits of devils") directing the present course of all nations of the world. In agreement with this the Bible further says that the world (organized governments) is under the control and influence of the devil. (John 12:31; John 14:30; 2 Corinthians 4:4; Revelation 12:9, 12, 17) The text of 1 John 5:19 reads: "And we know that we are of God, and the whole world lieth in wickedness [in the evil one, *A. R. V.*]." The Bible also points out very plainly that kingdoms of this world are to be 'broken in pieces and consumed' *by God's kingdom* (Daniel 2:44); and this is corroborated in God-given prophecies of Revelation, Jeremiah, Ezekiel, Isaiah and other prophetic books of the Bible. But the literature plainly points out that such destruction will be an ACT OF GOD and that Jehovah's witnesses and all other human creatures will have no part whatsoever in such destruction, and they are counseled against the use of force.

Certainly it is not sedition, nor can it be said to be advocating overthrow of the government by force and violence, to proclaim the doctrines of the Scriptures to the people, as did Jesus and His apostles. (Matthew 10:7; 28:18-20; 1 Corinthians 9:16) All who recognize God's Word, the Bible, as the guide for Christians must admit that Jehovah, the Almighty God, promises to destroy Satan and his entire organization. Who would want to fight against God by trying to prevent the proclamation of His message by His people that He is now about to perform such act? The words of the ancient judge, Gamaliel, recorded at Acts 5:37-39, showing that such is fighting against God, as well as the words of the Almighty God at Psalm 2:10-12, might well be seriously considered by all who put themselves in the way of carrying out of God's commands: "Now therefore be wise, O ye kings; be instructed, ye judges of the earth. Serve Jehovah with fear, and rejoice with trembling. Kiss the Son, lest he be angry, and ye perish in the way,

for his wrath will soon be kindled. Blessed are all they that take refuge in him.”—*American Revised Version*.

An additional objection to the doctrines preached by the appellants in these three cases is stated by the court below as follows:

“ . . . Aside from the other elements contained in the statute, it can readily be understood why the jury might conclude that what was said and done here, and the reasons behind the arguments, would reasonably cause such refusal to salute, honor or respect the flag. That is conclusively shown in the cases above cited\* where children of the members of this sect choose to be expelled from school rather than salute the flag. There were children present on the occasion at the home of Mrs. Joyner.” Taylor Record page 161.

The court below also says:

“ . . . What the statute does prohibit is the going about into the homes and among the people, and by affirmative teaching and action, attempting to persuade the people, at this tragic time, to have disrespect for and disloyalty towards the flag and the state and the nation, and to evince an attitude of disobedience to the laws of the land, thereby undermining the war efforts of the state and national governments.”—Record page 130 (Cummings).

Judge Griffith, concurring to the above, says:

\* *Minersville Dist. v. Gobitis*, 310 U.S. 586; *People v. Sandstrom*, 279 N.Y. 523, 18 N.E. 2d 840; *Leoles v. Landers*, 302 U.S. 656 (dismissing appeal from 184 Ga. 580, 192 S.E. 218); *Hering v. State Bd. Ed.*, 302 U.S. 624 (dismissing appeal from 118 N.J.L. 566, 194 A. 117); *Nichols v. Lynn*, 297 Mass. 65, 7 N.E. 2d 577; *Barnette v. West Virginia State Bd. of Ed.*, 47 F. Supp. 251; *Gabrielli v. Knickerbocker*, 306 U.S. 621 (dismissing 82 P. 2d 391).

"Teaching that to salute the National flag is an act of idolatry, and that the consequences of such an act is eternal damnation, is a pointed symptom of the disease which lies at the bottom of the subversive and destructive doctrines which this appellant and his co-workers are seeking to spread in our state in this time of war, the result of which means everything to us as a state and nation." Record page 131 (Cummings).

We should like to call the Court's attention to the fact that the appellants testified that they respected the flag and recognized it as a symbol or emblem of the government and the things for which the government stood, but that they could not salute the flag because to do so would be, *to them*, a violation of God's law and their covenant with Him which would result in their everlasting destruction. Here we point out that the appellants testified that there is a difference between one in a covenant, such as each of them, and one not in a covenant with Almighty God. To one not in such a covenant, who desires to salute a flag, it is his concern entirely and Jehovah's witnesses do not desire to interfere with the exercise of that one's right to salute the flag. Therefore no fair-minded person can sanely contend that the act and conduct of appellants amounted to sedition or disrespect to the flag. Even if they were requested to salute the flag, their refusal in the circumstances would not be seditious. They testified that they did not teach but merely explained the reason of *their* stand on the matter whenever it was brought up by others and an explanation asked by others. The undisputed evidence, and the literature, does not say that the people should not salute the flag, but merely explains that Jehovah's witnesses, as true Christians, in a covenant with Almighty God, of faithfulness, could not so salute without violating said covenant.

In the days of Paul the apostle the Israelites objected not only to saluting flags, symbols and standards, but even protested to the presence of the Roman insignia in the holy

city of Jerusalem in the days of Pontius Pilate, the resident governor of Judea, as recorded by the Jewish historian, Josephus, in his *Antiquities*, Book xviii, 3, 12, and *Wars of the Jews*, ii, 9, 2-4, where it is pointed out that the Jews raised such a vigorous protest when the Roman soldiers brought the Roman emblems and flags into Jerusalem that Pilate yielded to their demands and the standards were ordered withdrawn and taken back to Caesarea. Objection was also urged when the Roman Eagle was placed on one of the Roman state buildings occupied by the resident governor in Jerusalem. See McClintock and Strong, *Cyclopedia*, Vol. VIII, p. 200.

There is no record that Paul was prosecuted for refusal to salute the flag, but it is plain that the Roman government did not consider it seditious to refuse to honor the presence of the Roman flag in Jerusalem.

The position of Jehovah's witnesses on the flag-salute question is the position of all true Christians since the day Jesus Christ was on earth. It is a sincere position from which they cannot change without suffering everlasting death as a result of their violating their covenant with Jehovah, the Almighty God. The same position was taken by the three faithful Hebrews, Shadrach, Meshach, and Abednego. (Daniel chapter 3, particularly verses 16-18) The same position was taken by Jehovah's prophet Jeremiah, as heretofore pointed out. Mordecai, Jehovah's faithful servant, took the identical position while at the king's palace at Shushan in ancient Persia. (Esther 3:1-6) Many other faithful witnesses of Jehovah likewise maintained their position of trust, as indicated at Hebrews, chapter 11; Exodus, chapters 5 to 15, inclusive; Joshua, chapters 6 and 8; Judges 6:25-32; 1 Samuel 17:45-54; 2 Chronicles 20:14-24; Matthew 4:1-10; Acts 5:17-42; chapter 7; Revelation 1:9.

It is objected that Jehovah's witnesses say they are "neutral" and that no person in a covenant with Almighty God can bear arms for one political government as against another. In this connection the Court's attention is again



called to the provisions of the Selective Training and Service Act and the Presidential Regulations thereunder exempting from military training and service those having conscientious objections to military service, and *wholly exempting* also every ordained minister, such as priests, pastors, rabbis, and even divinity-school *students* preparing to perform their full-time life work as respondents to a higher calling to serve their fellows in matters spiritual and godly. Therefore the claim that Jehovah's witnesses are seditious because of their "neutrality" and refusal to bear arms is altogether hypercritical, without merit, and deserves no serious consideration.

In this connection it is respectfully drawn to the attention of the Court that appellants' testimony shows that Jehovah's witnesses are not political; they do not use nor advocate use of carnal weapons against any organization and they do not advocate violent overthrow of the government.

Jehovah's witnesses do not interfere with the nation's program to arm and do not object to other persons bearing arms. Jehovah's witnesses have nothing to say as to action of others, not in a covenant to serve Jehovah, the Almighty God. They consider this an individual matter entirely, and they do not interfere therewith.

This is exactly the same position taken by Jehovah's witnesses in times of old, whose course of action is recorded in the Bible. Witness the fact that Abraham, "the father of the faithful," refused to indulge in war between the surrounding heathen nations; also, that Paul, a Roman citizen, imitated Christ Jesus and His other apostles and did not bear arms in behalf of the Roman military government.

Wholeness, exclusive singleness of purpose and obligation of a covenant-bound servant of Almighty God is uniquely emphasized by Paul in his letter to Timothy, as follows:

"Labour as a good soldier of Christ Jesus. No man,



being a soldier to God, entangleth himself with *secular businesses* [the affairs of this life, *King James Version*]; that he may please him to whom he hath engaged himself."—2 Timothy 2:3,4, *Douay* (Roman Catholic approved) *Version*.

This position is taken essentially because distinct and very real obligations imposed by their covenant-relationship with their Maker removed them from the world and placed them in a position as ambassadors for God's Government of Righteousness.\*

We submit therefore that the facts and circumstances shown in these records of the course of action taken today by Jehovah's witnesses is identical with the facts and circumstances concerning the course of action taken by the faithful apostles and other servants of Jehovah whose cases are recorded in God's Word, and that on the basis of such authority the indictments against the appellants here should be dismissed, because of abridging their rights of freedom of conscience and of preaching the gospel of the Kingdom of Almighty God—which is their way of exercising their freedom of worship—according to the dictates of conscience.

\* Compare a like view *successfully* contended for before Congress on behalf of the entire Roman Catholic Hierarchy in the United States: See *Report of Hearings before the Committee on Military Affairs*, House of Representatives, 76th Congress, 3d Session, on H. R. 10132 ("Selective Training and Service Act of 1940"), July 30, 1940—Statement of the Rt. Rev. Msgr. Michael J. Ready, General Secretary of the National Catholic Welfare Conference, Washington, D. C., pages 299-305.

See, also, "More Deferment Asked for Catholic Workers," editorial in *The Christian Century* (Chicago), Vol. LX, No. 12 (March 24, 1943), p. 349 et seq.; and *Catholic Action* (Washington, D. C.), March 1943 issue.

## G

**Many recent holdings of the courts sustain the right of appellant to distribute literature and to speak the words complained of, under the guarantee of freedom to worship ALMIGHTY GOD.**

This matter has been thoroughly discussed and briefed in the companion case of *Taylor v. State of Mississippi*, under Point One-G, pages 59 to 62, to which reference is here made and such argument incorporated as though printed at length herein.

We have searched the reports in vain for a case where some minister of any religious or Christian organization has been charged with sedition because of preaching the gospel of God's Kingdom as the only hope for mankind and have been unable to find any except the case of *McKee et al. v. State of Indiana*, reported in 37 N. E. 2d 940. In that case the appellants, Jehovah's witnesses, were charged by affidavit with a violation of the riotous conspiracy statute of the State of Indiana in assembling together at night-time for a Bible study and study in the Watchtower literature, for the purpose of unlawfully, purposely, maliciously inciting the people of Indiana against all forms of organized government and disrespect for the flag of the United States of America. At the trial evidence was offered of the identical nature involved in these cases. It was established that Jehovah's witnesses advocated that a Christian in a covenant with Jehovah God could not salute any flag. This was contended to be seditious. It was established, as a basis for conviction, that Jehovah's witnesses advocated that Jehovah God would in His due time destroy all kingdoms of this world in His 'battle at Armageddon'. This was contended to be a violation of the statute. The evidence also showed that it was advocated by Jehovah's witnesses that God's Law was Supreme and that a Christian in a covenant with Jehovah God must "obey God rather than men" when

the laws of man were at variance with the Law of God. This was contended to be seditious. The Supreme Court of Indiana set aside the convictions on the ground that they were contrary to law and said, "The only claim of an offense under this Act is that the literature advocates the overthrow of all human governments. If this be conceded nevertheless it is not shown to advocate or incite such overthrow by the use of force or violence. This is necessary to constitute the offense. The evidence therefore is insufficient to sustain the verdict if it is based on this statute."

In 1940 Jehovah's witnesses were prosecuted by an indictment filed in the Harlan County Circuit Court of Kentucky for an alleged violation of the sedition statute of that state because the literature which they were alleged to have distributed advocated the establishment of a government "by one Jehovah". For the purpose of enjoining future threatened repetitions of these illegal prosecutions, Jehovah's witnesses filed an action in the United States District Court for the Eastern District of Kentucky. A three-judge court was impaneled and heard evidence and reached a conclusion, after a six months' review of more than one hundred pieces of the Watchtower Society literature, that they did not constitute a violation of the sedition statute and that Jehovah's witnesses were entitled to the injunction prayed for. This opinion is reported. See *Beeler v. Smith*, 40 F. Supp. 139.

On March 22, 1938, the Appellate Division of the Supreme Court of South Africa, in the case of *Magistrate of Bulawayo v. Oliver Maidstone Kabungo*, held that fourteen publications, mentioned in the opinion, published by the Watch Tower Bible & Tract Society, containing the same doctrines and opinions assailed in the cases at bar, did not violate Section 62 of the Sedition Act of Southern Rhodesia, No. 41 of 1936, and ordered the books released that had been impounded under said sedition act. In that case, the Court said:

"I am therefore of opinion that the word 'disaffection' must be construed in section 2 of the Rhodesian Act in the sense above suggested, viz., as meaning discontent or dissatisfaction tending to, or accompanied by, the use of force, tumult, riot, insurrection, or breach of the peace.

"I come now to the second main question, viz., whether the publications are expressive of an intention to excite disaffection in this sense of the word; in other words, to put it badly, does the writer intend to incite people to use force against the government, or to revolt, and to commit breaches of the peace? I may say at once that in my opinion the writer had no such intention, and his books are not expressive of such an intention. He is a religious propagandist, burning with the zeal of his convictions. He condemns many things in modern political, ecclesiastical, and commercial life; and he quotes extensively from the Bible, mainly from the prophets. He may perhaps intend to inspire his readers to look with disfavor and disapprobation on all modern forms of government, but nothing could be further from his mind than to advocate the use of force against any government. The burden of his teaching is, 'Come ye out from amongst them, for they will be destroyed by Jehovah.' *Mr. Hoexter* freely and fairly admits that the books do not indicate an intention of inciting to fight, and rightly so. But, as *Mr. Beadle* points out, the matter goes much further than that, for the author, *Rutherford*, expressly warns his readers not to use force. Thus in the volume "Kingdom" he writes (p. 10):

'Our faith forbids us to engage in war or any other enterprise that would work harm to mankind.'

In "Government" (p. 247) he states that:

'What is said here against the various forms of government is not said with a view to provoking revolution.'

So again in "Supremacy" (p. 51) he writes:

'Every nation has laws, and every citizen of such nation must obey those laws unless the law is in direct violation or contravention of God's law.'

There are many similar passages to which Mr. Beadle has referred the Court.

"My conclusion is therefore that the books are not expressive of an intention to excite disaffection in the sense above stated by me."

We submit that this case is controlled by *Cantwell v. Connecticut*, 310 U. S. 296. Jesse Cantwell was convicted under the fifth count of common law breach of the peace. In setting aside the conviction Mr. Justice Roberts said:

"Decision as to the lawfulness of the conviction demands the weighing of two conflicting interests. The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged. The state of Connecticut has an obvious interest in the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the State's interest, means to which end would, in the absence of limitation by the federal Constitution, lie wholly within the State's discretion, has been pressed, in this instance, to a point where it has come into fatal collision with the overriding interest protected by the federal compact. . . .

“ . . . Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application. . . .

“We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse. On the contrary, we find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion.

“In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

“The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds.”

The most that can possibly be made of the appellants' statements—written or oral—and activity is that it is hereby against the doctrines of the “recognized” religions.

In the Holy Roman Empire and in the early days of the British Empire, heresy was regarded as a crime against the state because the "recognized" religion was incorporated in and made a part of the state. Heresy was not recognized as a crime under the Roman law until Constantine accepted the Roman Catholic faith, whereupon he promptly enacted, pursuant to the concordat made with the "church of Rome", incorporated into the Roman corporate state, several severe laws for the repression of heresy which were continued into the Justinian Code. Heresy then became considered as a crime against the state, akin to sedition. The penalties for the infraction of the laws prohibiting heresy were very severe because, as above stated, the crime was considered a crime against the state. These laws were enacted in other parts of the Holy Roman Empire and were strictly enforced until the oppressive papal yoke was thrown off by the people in the Reformation.

The doctrine of the "separation of church and state" stopped the prosecutions for heresy in Great Britain and in many countries on the continent of Europe. Ever since the Declaration of Independence and the adoption of the Constitution and the Bill of Rights of the United States, the people of this nation have consistently adhered to the doctrine of "separation of church and state", therefore the nation has consistently refused any thought of prosecutions for heresy.

In America, one who in the eyes of religionists is a *heretic* has just as much constitutional right to speak freely on matters of his conscience and opinions which he holds dear unto himself, as does any member of any "recognized" religion.

An examination of the literature of the Watch Tower Bible and Tract Society—publishers for Jehovah's witnesses—shows clearly that it is based exclusively upon the Bible; and if this Court permits these convictions to stand, under the guise of sedition, then a way has been found to authorize the prosecution, conviction and internment for



the offense of "unorthodoxy", "nonconformity," or *heresy*; and the state is found taking an unconstitutional step toward establishment of a state religion in this land of "LIBERTY and justice for all". We do not feel that this Court will yield itself to the extent that it is requested to do by the State of Mississippi. Such a long step would be indeed dangerous and devastating to *this* nation, which Lincoln said was "conceived in *liberty*, and dedicated to the proposition that all men are created equal."

The extent to which the Mississippi sedition statute has lent itself in these cases reminds us of the words of the late Charles F. Amidon, Federal District Judge, in referring to prosecutions under the Espionage Act of 1917:

"Only those who have administered the Espionage Act can understand the danger of such legislation. When crimes are defined by such generic terms, instead of by specific acts, the jury becomes the sole judge, whether men shall or shall not be punished. Most of the jurymen have sons in the war. They are all under the power of the passions which war engenders. For the first six months after June 15, 1917, I tried war cases before jurymen who were candid, sober, intelligent business men, whom I had known for thirty years, and who under ordinary circumstances would have had the highest respect for my declarations of law, but during that period they looked back into my eyes with the savagery of wild animals, saying by their manner, 'Away with this twaddling, let us get at him'. Men believed during that period that the only verdict in a war case, which would show loyalty, was a verdict of guilty."

### THREE

**The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.**

The admitted facts and the undisputed evidence show that appellant, in the distribution of the literature in question, was engaged in an activity of "the press", protected by the First Amendment, made applicable against abridgment by the states by the Fourteenth Amendment.

In a democracy, written words are just as effective and *necessary* for every person in time of war as in times of peace.

"The pen is *mightier* than the sword"—to win the war as well as the peace!

"How forcible are right words!"—Job 6:25.

"JEHOVAH . . . said, Write the vision, and make it plain upon tablets [booklets or pamphlets], that he may run that readeth it."—Habakkuk 2:2, *American Standard Version*.

The beginning of this democracy and the successful winning of the colonists' revolutionary war can be credited more to a mere pamphleteer than to General Washington.

Penned words of that pamphleteer, vividly describing what was in his heart, stirred a ragged, beaten, hungry army *to take courage*—and **WON THE REVOLUTION!**

It was the winter of 1776. What was left of the battered and outnumbered Colonial Army was retreating across New Jersey. The men were so cold for lack of clothes that most of them were, in Washington's own words, "either naked or so thinly clad as to be unfit for service."

Their only chance for help was the arrival of General Charles Lee; *then Washington learned that Lee had been captured!* The American cause seemed doomed. Men began to desert. Others refused to re-enlist.

One bleak, hopeless night a volunteer, a pamphleteer, aide-de-camp to one of Washington's generals, sat down on a log beside a campfire and, using a drumhead for a table, wrote the words that begin,

**"These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it now, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph . . ."**

Washington ordered those words read to his shivering army. They heard and took heart. Two days later this rabble band dealt a crushing and unbelievable defeat to the British at Trenton.

The young man who wrote the words and passed them on to Washington to help win that war was Thomas Paine, a *pamphleteer* discovered in London by Benjamin Franklin.

This proves beyond all question that the argument, that *any* of the liberties guaranteed by the First Amendment should be curtailed in *time of war*, is the greatest fallacy and the most dangerous, un-American doctrine that can be conceived in the mind of any true American.

Therefore the doctrine that the Bill of Rights can be or is weakened, narrowed, diminished or suspended during a national emergency, is subversive, destructive of the government and the Constitution itself.

Insofar as the right of freedom of press relates to the freedom of worship, viz., the distribution of sermons on the Bible, a "preaching activity", it is further discussed under Point TWO, supra, page 28 et seq.

The right of freedom of press has been exhaustively briefed and argued under Point THREE in the brief filed in the companion case of *Betty Benoit v. State of Mississippi*, pages 19 to 42, which we incorporate by reference as though printed at length herein.

## FOUR

The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

The terminology of the statute in question is so vague and indefinite that it is difficult to say just what is meant. It gives uncontrolled leeway for those who may be in control so to enforce a statute like this with such arbitrary and harsh discrimination that all free written discussion and free speech can be curtailed by fear of persecution. The statute is so indefinite and ambiguous, as to interpretation to be given it, that it constitutes a violation of the *due process* and *equal protection* clauses of the Fourteenth Amendment. The fact that appellant in carrying on his preaching of the gospel was arrested, convicted and sentenced under the statute is proof conclusive that it constitutes a dragnet. Its declared purposes cannot save it, since it has been framed and applied so as to permit denial of the fundamental rights of freedom of speech, press and worship of Almighty God.

The brief filed in companion case of *Taylor v. State of Mississippi* has adequately covered the argument under this point and so the matter will not be repeated here, but the same is incorporated by reference as though printed at length herein. See Point FOUR, *Taylor* brief, pages 80 to 87.

## Conclusion

Jehovah, the Almighty God, more than six millenniums ago, promised to establish through the Messiah a government of righteousness. He will perform that promise in due season. (Isaiah 55:11) Present-day facts viewed in the light of prophecy indicate that the time of fulfillment is imminent. There are many evidences. One is this: Since the end of the first world war the spirit of totalitarianism has again come to the front; that spirit has overrun Europe! It is now striking at the very life of the British Empire and the British people! It is assaulting the walls of the American Republic!

If this attempted application of the statute in question to activity of Jehovah's witnesses (in bearing testimony to the Word and Name of Almighty God as He commands) can be upheld, then all similar attempts may succeed against the people, to take away any and *all* liberty. The Bible plainly shows, therefore, that the only source of relief for the people from totalitarian or authoritarian rule, oppression and suffering will be when Almighty God breaks the yoke of the oppressors in His 'battle at Armageddon' which precedes the completion of His Theocratic Kingdom in the earth—near at hand!

The circumstances in which the people and the nations now find themselves present a clear, serious and immediate danger of everlasting destruction for all time of every one who fails to take his stand on the side of Jehovah God and His Kingdom. The responsibility of Jehovah's witnesses, therefore, is to warn the people that they might flee *now* to the "mountains" of God's Kingdom and there find the only place of safety. Their responsibility can be likened to that of the "weather man" who, knowing that a great storm or tidal wave approaches, is obligated to sound warning to his neighbors and all inhabitants of the territory under his care. Should he fail or refuse to do so, and instead merely gather his own possessions and 'run for his life' without

warning others, he would be guilty of a crime of the worst kind. As one of Jehovah's witnesses, faithful Noah did not keep to himself and his immediate family the knowledge of a similar impending danger, but preached thereof for many years, during which time he prepared the Ark under God's direction as a means of escape and protection from the great deluge. Genesis, chapters 6-8.

God's provision is that His covenant people, Jehovah's witnesses, must sound the warning of the "time of trouble". Should they fail, neglect or refuse to do so, in the manner done by appellants, they would subject themselves to everlasting destruction at the hands of Jehovah's Executioner in His 'battle at Armageddon'. Jehovah's witnesses, therefore, have no alternative when confronted with oppressive laws thrown in their path to interfere with this warning work—done by them under a mandate from Jehovah. In the words of Jesus' faithful apostles they now declare: WE MUST OBEY GOD RATHER THAN MEN.

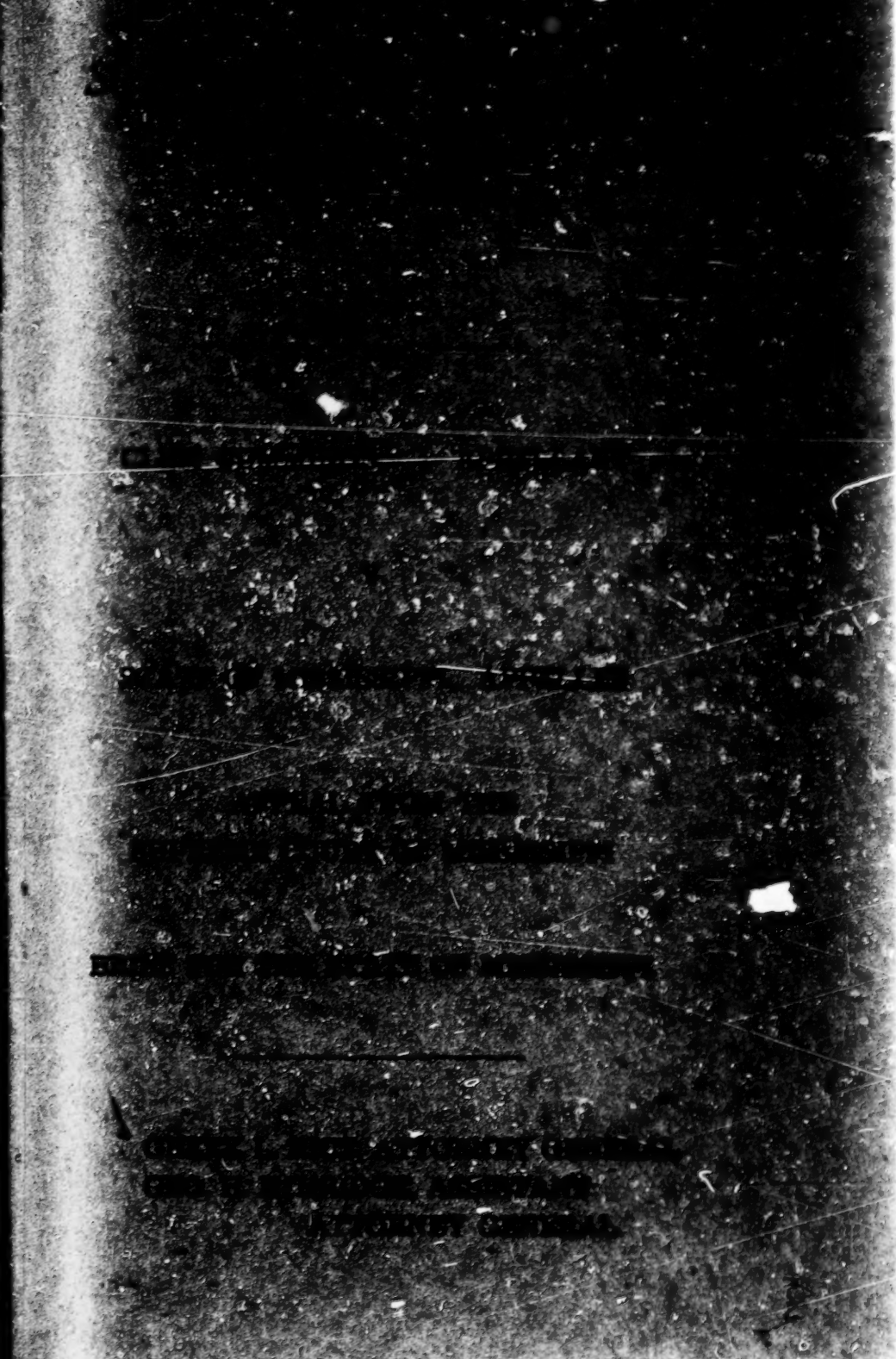
Respectfully and confidently,

HAYDEN C. COVINGTON

117 Adams St., Brooklyn, N.Y.

*Attorney for Appellant*







**SUPREME COURT OF THE  
UNITED STATES**

**OCTOBER TERM 1942**

NO. \_\_\_\_\_

**CLEM CUMMINGS,      APPELLANT**

**V.**

**STATE OF MISSISSIPPI, APPELLEE**

**APPEAL FROM THE  
SUPREME COURT OF MISSISSIPPI**

**BRIEF FOR THE STATE OF MISSISSIPPI**

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**GREEK L. RICE, ATTORNEY GENERAL  
GEO. H. ETHRIDGE, ASSISTANT  
ATTORNEY GENERAL.**

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When the statute makes the doing of several acts, each a crime, in the same section, using the disjunctive or, the indictment may charge the doing of all, or any number of them using the conjunctive and may prove any one or more, but a Judgment of Conviction or acquittal of any one or more will support a plea of former acquittal or former conviction will be a subsequent prosecution.

### Citing:

Norwood v. State, 182 Miss. 898, 183 So. 523; McQueen v. State, 143 Miss. 787, 109 So. 799; Clue v. State, 78 Miss. 661, 29 So. 516, 84 Am. St. 643; Brady v. State, 128 Miss. 575, 91 So. 277; Coleman v. State, 94 Miss. 860, 48 So. 181; State v. Clark, 97 Miss. 806, 52 So. 691; Jimmerson v. State, 93 Miss. 685, 46 So. 948.....	page	3
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The statute, Chap. 178, Laws of 1942, does not command the doing acts, but prohibits acts deemed harmful. See Opinion in Mississippi Supreme Court in this case below.

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**IN THE SUPREME COURT  
OF THE UNITED STATES**

**OCTOBER TERM 1942**

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**CLEM CUMMINGS**

**APPELLANT**

**V.**

**NO.** \_\_\_\_\_

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF FOR THE STATE OF MISSISSIPPI**

This is an appeal from a conviction in the Circuit Court of Warren County, Mississippi, affirmed in the State Supreme Court, of the appellant, Clem Cummings, for violating Chapter 178, Laws of 1942. The indictment charges that Clem Cummings on or before the 9th day of July, A. D., 1942, with force and arms, in the county aforesaid, and within the jurisdiction of this court, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled "CHILDREN", and said book entitled "CHILDREN" being attached hereto and made a part of said indictment as though fully copied herein \* \* \* which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of

Mississippi. Contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi. (R. p. 4)

The appellant demurred to the indictment, the demurrer, in substance, challenges the sufficiency of the indictment because of the constitutionality of Chapter 178, Laws of 1942, as denying the defendant his right to freedom of worship according to the dictates of his conscience, freedom of press, and freedom of speech, contrary to Sections 13, 14, 18, and 32 of the Constitution of the State of Mississippi and the First Amendment to the United States Constitution and section I of the Fourteenth Amendment to the United States Constitution (R. p. 7).

The second ground appears to be identical with the first, at least in substance. (R. 8)

The third ground of the demurrer is that Section 1 of Chapter 178, House Bill 689 of the Legislature Session 1942, is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting a denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution. (R. p. 8)

The fourth ground is that it is unconstitutional because it is too general, indefinite and permits speculation on the part of the jury and the court trying the cause, thus constituting a dragnet both on its face and as construed and applied, contrary to the said Section 14 of Article 3 of the Mississippi Constitution. (R. p. 9)

The fifth ground is that Section 2 of the Act is unreasonable and in excess of the police powers of the state. However, this section is not involved in the present prosecution, the indictment being drawn on

Section 1 of Chapter 178, Laws of 1942, House Bill 689 of the Legislature Session. (R. p. 9)

The sixth ground is based on the denial of equal protection of the laws in that it discriminates between classes. (R. 9)

The seventh ground is that the indictment fails to allege any facts or circumstances showing commission of any public offense or the violation of any laws of the state. (R. p. 9.) The demurrer was overruled and the appellant filed an alleged motion to quash, setting up indentially the grounds set up in the demurrer and on trial of the case, at the conclusion of the state's evidence, moved for a directed verdict and also moved for a directed verdict at the close of the whole case, which motions were overruled. There was a conviction and the court below sentenced the appellant to imprisonment in the State Penitentiary for the duration of the war, but not to exceed ten years. (R. p. 34)

It is regrettable that the indictment did not select the provisions deemed by the state to constitute a violation of the law contained in the book "CHILDREN". The entire book consists of 368 pages, but there was no demurrer or other challenge of the sufficiency of the indictment upon this specific ground.

The rule is that where a statute makes the doing of several acts, each a crime in the same section, the indictment charge the doing of all of them, using the word and instead of or and prove any of them. *Brady v. State*, 128 Miss. 575, 91 So. 277; *Coleman v State*, 94 Miss. 860, 48 So. 181; *State v. Clark*, 97 Miss. 806, 52 So. 691; *Jimmerson v State*, 93 Miss. 685, 46 So. 948; *Clue v State*, 78 Miss. 661, 29 So. 516, 84 Am. St. 643; *McQueen v. State*, 143 Miss. 787, 109 So 799; *Norwood v. State*, 182 Miss. 898, 183, So 523.

The constitutionality of Chapter 178, Laws of 1942, on its face is raised by the demurrer; and any act which it forbids may be considered regardless of the proof in the record on this charge. The whole literature, and all of the actions shown in the record may be looked to. The statute does not command any person to salute the flag. It does not require acts, but it prohibits acts which the Legislature thought dangerous and subversive of the national defense and the public welfare as said by Judge Roberds, in the controlling opinion in this case: (11 So. (2) 683)

" \* \* \* the Mississippi statute does not attempt to coerce, control or direct, in the slightest degree, the conscience or religious beliefs of any person. So far as that statute is concerned, one may believe in and worship a Divine Being, or any ideal or thing the worshiper may think divine, under the name of Jehovah, or any other name; or, on the other hand, he is free to worship satan, a golden calf, any animal or thing, or any image of anything, real or imaginary. What the statute does prohibit is the going about into the homes and among the people, and, by affirmative teaching and action, attempting to persuade the people, at this tragic time, to have disrespect for and disloyalty toward the flag and the state and the nation, and to evince an attitude of disobedience to the laws of the land, thereby undermining the war efforts of the state and national governments. The statute does not command any one to salute the flag or do anything else; it simply demands that people shall not engage in certain affirmative activities which the sovereign state, through its legislature, has determined are harmful to other people and to the public welfare

and to the defensive war efforts of the state and nation."

I refer also to the opinion of Justice Griffith, concerning as properly characterizing the purpose and conduct of the appellant. He says: 11 So. (2) 684

"Teaching that to salute the National flag is an act of idolatry, and that the consequences of such an act is eternal damnation, is a pointed symptom of the disease which lies at the bottom of the subversive and destructive doctrines which this appellant and his co-workers are seeking to spread in our state in this time of war, the result of which means everything to us as a state and nation. We must look behind technical obscurities and to the substance of things. If appellant may maintain the right so to teach it and urge it among the soldiers and marines wherever access may be had to them; and if our soldiers were to refuse to salute the flag wherever unfurled, and particularly when the military regulations require them to do so, then we would have an army and a navy which would be entitled to no respect at home or abroad; and whoever teaches that which, if followed, would bring our armed forces into such disrespect ought well to be in the penitentiary, as the statute appropriately declares."

The statute in nowise interferes with religious opinion or proper religious practices. Criminal acts cannot be justified by religious beliefs. But acts hurtful to the public needs in time of war may be prohibited and punished. The state may at all times require the loyalty of its citizens and may teach the principles of its government, and respect for its institutions and its flag.



With these observations at this place, I turn now to a full statement of the facts, and will then discuss the constitutional features of the case.

\* The whole book is before the court, being an exhibit to the indictment and also an exhibit to the testimony. On the trial of the case, pages 314 and 315, down to about the middle of page 315, were offered in evidence by the state, which matter reads as follows (The quotations and page references are to the book CHILDREN):

"Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12: 12,17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practice by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and the children who insist on obeying the commandments of God. This makes the way of both parents and children more difficult, but at the same time it puts a test upon them and affords them the opportunity to prove their obedience and to maintain their integrity toward God and his King. Both parents and children who are now consecrated to do the will of God should rejoice in their privilege of hearing the reproaches that fall

upon them because of their faithfulness to the THEOCRACY under Christ. If they remain true and faithful to the Lord amidst such great persecution and opposition they may be fully assured that the Lord will shield and protect them and give them his great blessing through Armageddon and take them over into the new world to serve with joy forever. The Lord never forgets or forsakes those who are faithful to him."

Other provisions were inquired about in the course of the examination of the witnesses and the whole book was introduced in evidence and was before the jury. The book is so composed and written as to deceive or influence the Juvenile mind and also the mind of illiterate and unlearned persons, and, taken as a whole, I think, it is clear that the book violates the provisions of the statute. Furthermore, the whole book should be read to judge of its purpose. When this is done it is clearly seditious.

I will refer to a number of pages in this book, which I think is material for the Court's consideration. Of course, the Court will consider the book in its entirety in determining the effect of the teachings of the book. On page 303, beginning about the middle of the page, there is a statement in the book as follows:

"The demons, under the command of the chief of demons, Satan the Devil, had in Noah's day completely overrun and debauched all the human race aside from Noah and his family. Likewise today the demons, under the influence, power and control of the Devil, now influence and control all the nations of the earth aside from those who have taken their stand firmly on the side of THE THEOCRACY."

The effect of this is to teach that all governments and officers in control of them are under the influence of demons, whose chief is Satan the Devil, and consequently that it is an evil and unrighteous government.

I desire to call the Court's attention to the matter contained in the book, under the heading, "Human Laws," pages 271 and 272 and the lower paragraph of page 273:

" \* \* \* Suppose the state enacts a law, and the keeping of that law by a child who is in covenant with God would make the child an idolator and hence a violator of God's law, what shall the child do? God's law provides that all who practice idolatry shall be everlastingly destroyed. Human laws, that is, laws of nations, punish those who disobey their laws, and sometimes the punishment is death. As to what a person in a covenant with God shall do under such circumstances Jesus gave the correct answer \* \* \*

"All human laws that are valid derive their authority from God's law. One must choose to obey either the law of man or the law of God, and those in a covenant with God and having agreed to do His will must obey the law of God, if they would live.  
\* \* \*

"Parents are often required to suffer punishment because they teach their children the Word of God, but such suffering does not deter them from teaching the child what God has commanded. If the parents or children are punished by the state for rendering obedience unto God's law, then that suffering is for righteousness' sake." \* \* \*

"If the child of God is put to death because he obeys the law of God, which is supreme, God will not forget that faithful soul but will raise him up out of death and grant to that faithful one life everlasting. Fear God, and live."

Also, to matter contained on page 270, beginning at the second paragraph and extending to the third paragraph:

"The parents who have agreed to do the will of God must teach their children to love God: 'And thou shalt love the Lord thy God with all thine heart, and with all thy soul, and with all thy might. And these words, which I command thee this day shall be in thine heart: and thou shalt teach them diligently unto thy children and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up. And thou shalt bind them for a sign upon thine hand, and they shall be as frontlets between thine eyes.'"

Also, to a part of page 267, under the title "WHERE" extending from said word "Where" about the middle of the page to the bottom thereof:

"Shall the child be sent to the Sunday school of some religious organization to there receive instruction? No; for the reason that religious organizations do not teach the Bible, which is the way of righteousness. If the parents love their children they must and will instruct them at home in the Word of God and will take their children with them to the class or company where the Bible is carefully

and systematically studied, and there require the children to sit quietly and learn \* \* \* "

I also desire to call the Court's attention to the second paragraph on page 266 of said book:

"Generally those of the world who are parents desire to provide their children with a college education and a training in religion, commerce, and politics, with the ability to make money and shine in the world. Good that is enduring does not result from such worldly teaching."

Also, to page 260, at the second paragraph thereof:

"If one desires to be taught in the right way he must not follow the teachings of men, which teachings are contrary to God's Word, nor even lean to his own theories. To prate about, talk about or participate in such things as religion and evolution, is vain babbling."

I also call the Court's attention to page 259, near the middle of the page and extending to the last paragraph of said page:

"Religious ceremonies produce no good results and are in vain and injurious, because contrary to the Word of God. Note the clear distinction made between such religious ceremonies and the truth. 'Study to shew thyself approved unto God, a workman that needeth not to be ashamed, rightly dividing the word of truth.' "

Also to the matter contained on page 257, beginning at the second paragraph and extending to the bottom of the page.

"Marriage and childbearing is God's arrangement for humankind that shall live on the earth. Parents who have made a covenant to do the will of God and who have children are properly said to be 'in the Lord,' within the meaning of the foregoing text. Their children, therefore, must be taught by the parents in the Lord to be obedient to the Lord and to their human parents as they follow the Lord. Such parents who are in the Lord, must be 'taught of God' and obey him. \* \* \* It follows that they should require their children to be obedient to His commandment or rules, which the Lord has put in His word. Upon all parents who are in a covenant to do God's will there is laid a duty and specific obligation to teach their children the Word of God, and it is the duty of the children to obey their parents who give such instruction."

I would also like to call the Court's attention to the matter contained on page 249, using the following language:

"All the physical facts that have come to pass show that the end of the world of Satan's rule without interruption began in 1914, when Jehovah God sent forth Christ Jesus to begin his reign. \* \* \* From 1918 onward the persecution of the Lord's servants on earth increased. In answer to the above question as to conditions Jesus spoke the prophecy which must apply to and be fulfilled upon his faithful servants on earth from and after 1918 until Armageddon. To them Jesus says: 'Then shall they deliver you up to be afflicted, and shall kill you; and ye shall be hated of all nations for my Name's sake.' Matthew 24:9.'"



From this paragraph and throughout the literature at intervals the book and literature refer to the beginning of Christ's rule in 1914 and taking full effect in 1918, but when and where and through whom such rule is exercised does not appear. The literature treats all human government, other than their theory of THEOCRACY as being wrongful and controlled by demons.

This literature also teaches that the flag of the United States represents a government controlled by demons and that such saluting the flag is idolatry, punishable by destruction. What could bring the flag into greater contempt? What could create greater contempt and stubborn refusal to salute?

I desire to call the Court's attention to matter contained on page 245 and the top of page 246, under the title of "Religionists":

"The unbroken line of Bible testimony shows that at all times those who have indulged in reproaching the name of Almighty God and Christ and in the persecution of God's servants have been and are those persons who indulge in and practice religion. This is further proof that religion is demonism and religion is brought into action by the chief of demons, Satan, for the very purpose of bringing reproach upon the name of God and Christ and all those who serve Him. For this reason, Jehovah warned his chosen people that they must shun religion or demonism, because the same is a snare unto all who attempt to serve righteousness (Deuteronomy 7:1, 16). The nation of Israel yielded to religion, disobeying God's commandment, and that nation suffered destruction. It was the scribes, priests and Pharisees, the religious leaders of Israel, that persecuted the prophets of God, and this Jesus



plainly told them, as set forth at Matthew 23:33-36."

I also desire to call the attention of the Court to the matter contained at the bottom of page 241 and through to page 242, to the last paragraph on said page 242:

"What is meant in these texts just cited by the term 'the world'? The people and nations of earth that are under the influence of demons, of which Satan the Devil is the prince or chief of demons, constitute the world that lies in the wicked one. (I John 5:19 Diaglott). The world is made up chiefly of three ruling elements, to-wit: Religion, Politics, and Commerce; and all persons who thus rule practice some kind of religion, which is demonism, because their practice is contrary to God's Word. The world, therefore, consists of the organization of the peoples of earth into forms of government which are dominated by the power and influence of the invisible overlord, Satan. The new world will consist of all people who survive Armageddon, and who love righteousness and hate wickedness, and such will live on the earth under the supervision and control of the invisible righteous overlord, Christ the King. Thus it is seen that all people and all nations must now be separated or divided into two classes, that those who love righteousness and who serve righteousness shall live, and that those who choose wickedness shall be destroyed. 'The Lord preserveth all them that love Him; but all the wicked will He destroy. Psalm 145:20.'"

Also to page 236 of said book and down to about the middle of page 237:

"There are many religious organizations in the earth today, not one of which advocates and sup-

ports THE THEOCRACY. All of them teach and follow the traditions of men, which is against the Lord and all are an abomination in God's sight. There is a great and old religious institution that during the past 1500 years has spread all over the earth and has drawn into its clutches millions of persons, many of whom are very sincere, yet blind to the truth, and these are held in restraint by reason of the influence exercised over them by religious leaders. Such persons of good-will, God will see to it, shall have an opportunity of hearing the truth, that they may escape. That great religious institution is closely allied with commerce and politics and is a part of Satan's world. That great religious institution uses constantly as its slogan these words: 'The gates of hell shall not prevail against us.' Furthermore they say: 'When God's wrath comes, it will not touch us, because we have made a covenant with death, and an agreement with hell.' The leaders of that great religious institution are proud, austere and scornful men that rule within their institutions and exercise a powerful influence outside thereof. God, through his prophet and for the benefit of those who are held in restraint by such great religious institution, answers the boastful words of those scornful men in this manner: 'So shall be wiped out your covenant with death and your vision with hades (Sheol) not stand; when the overflowing scourge sweepeth past, then shall ye be thereby beaten down: as often as it sweepeth past, it shall take you away, for morning by morning shall it pass along, by day and by night; and it shall be nothing less than a terror to make out the message.' " Isaiah 28:18, 19, Rotherham.

I also call the attention of the Court to the matter

contained on page 232, under the heading ,“Strange Work” and continuing on page 233:

“Jehovah’s Witnesses and companions go from house to house calling the attention of the people to the Scriptures concerning Jehovah and his kingdom. That message of God’s Word necessarily exposes religion as the instrument of Satan, used to deceive the people, and against which Almighty God has repeatedly given warning to those who will hear. While the apostles were on the earth they shunned religion, warned the people against it, and preached this gospel of the kingdom of God. The apostle Paul, particularly, pointed out that religion is demonism. (Acts 17:22, Moffat, Rotherham; Galatians 1:6-16. Within a few years after the apostles had passed away professed Christian men, taking the lead in Christian organizations, fell victims to religion and religious practices and taught traditions of men rather than God’s word. They mixed God’s Word with their traditions, and thus the people were easily deceived. That practice continued for centuries and is carried on to this day. Then in due time God sent his Messenger, Christ Jesus, to prepare the way before Him (Malachi 3:1); and doing such work, the Lord called out from religious systems those sincere persons who desired to see and looked for the coming of the Lord and his kingdom in glory. It was those faithful ones who, being tested at the temple, became Jehovah’s Witnesses of modern days, and such the Lord sends forth to preach ‘this gospel of the kingdom’ as a witness to the nations of the earth before the final end of Satan’s organization. The message of the Lord, therefore, discloses that religion, which is practiced by the denominations, is demonism and the religionists

are blinded by the influence of the enemy and cannot see the truth. The Lord warns all sincere Christians to flee from religion and to serve God and Christ the King. He warns them that the day of his wrath against all ungodliness is near, and therefore the people must abandon religion or demonism and serve God and His kingdom if they would be saved."

The attention of the Court is also called to the matter contained on page 227, beginning with the second paragraph and extending to near the bottom of the same page:

"In modern times the colleges and universities, and particularly so-called 'theological schools', teach anything and everything but the gospel of God's kingdom. There are numerous religious denominations, which preach their own doctrines based upon the traditions or teachings of men. Prior to the coming of the Lord Jesus to the temple for judgment in 1918 many consecrated persons who were preaching to the people of and concerning His second coming were known as Millennial Dawnites, or Russellites, or International Bible Students, and other like sectarian names. But when the Lord Jesus cleansed the temple and the approved ones were sent forth to 'offer unto the Lord an offering in righteousness,' God separated His faithful servants from all others. The approved ones, brought into the temple, were made a part of Zion, the elected organization of Jehovah; and to such the Lord says: 'For Zion's sake will I not hold my peace, and for Jerusalem's sake I will not rest, until the righteousness thereof go forth as brightness, and the salvation thereof as a lamp that burneth.'"

I also desire to call the Court's attention to the matter contained on page 225, beginning near the top and extending down on said page to the heading, "Ordained".

"So necessary and important is it to be a witness for Jehovah that each one who agrees to follow in the footsteps of Jesus is admonished to lay aside every weight, that is, everything that hinders the full performance of his duty to serve God; also that he must put aside the sin that 'doth so easily beset' every creature, which sin is religion, because it is so very easy to fall under the influence of religion. This great sin, the Scriptures declare, must be laid aside and the Christian must become a faithful and true follower of Christ Jesus, and, as such, be a faithful and true witness of Jehovah God."

Also to the matter contained on page 221, under the heading "Jehovah's Witnesses," and extended down to page 222 to the heading "Jesus":

"The name 'Jehovah's Witnesses' means but one thing, to-wit, that each one is to bear witness for Jehovah, the Almighty God, and for none other. They are Jehovah's witnesses, and not members of some sect or cult as the Devil would have others believe. They are selected by the Lord God. They are not subject to the control of human organizations or human power. Their allegiance is to Almighty God. They must obey His commandments and are responsible to God for their action.—Romans 14:4.

"This wicked world is now in the 'last days' thereof. These are 'perilous times' and the day for the execution of the wicked is just at hand and the

Devil knows that his time is short. (2 Timothy 3:1; Revelation 12:12) 'The battle of that great day of God Almighty,' which shall destroy Satan's organization and all wickedness, is about to be fought. (Revelation 16:13-16). In these last days God has on the earth a comparatively small number of persons who are really devoted to him and his THEOCRATIC GOVERNMENT, and who now bear testimony to the name of God and His kingdom. The Devil would have all believe that this small company of faithful servants of Almighty God constitute a religious sect or cult following the lead of some man. No human power or organization could lead or control the witnesses of the Most High God. Even some countries, which are under the power and control of demonism, now declare by law that Jehovah's Witnesses are illegal. Such worldly organizations show complete ignorance of the purpose and power of Almighty God. No earthly government or power has any authority to declare Jehovah's Witnesses illegal; and in doing so such nation commits the rankest blasphemy and in due time shall receive a just recompense from the Lord's Executioner."

I would like to call the Court's attention to the matter contained on page 202, beginning about the middle of the page, at the second paragraph, and extending to about the middle of page 203, to the second paragraph on page 203:

"As the little flock must first exercise faith in God and in Christ Jesus before being called, even so the 'great multitude' must have faith in God and in Christ Jesus before they can take their stand on the side of the THEOCRATIC GOVERNMENT. Men



having the desire to be on the side of God and His kingdom begin to seek the way of righteousness, which is God's appointed way for all those who shall ever receive life everlasting. Learning that Jehovah is the Almighty God and Christ Jesus is the Redeemer of all who obey Him, such persons of good-will begin to exercise faith by trusting in Christ Jesus as the Redeemer, and by agreeing to do the will of God and of Christ. The ransom sacrifice is now available for all such, who believe on the Lord Jesus Christ, that His precious blood is the purchase price of mankind who obey him. Note that the Scriptures say that Christ Jesus is the 'author of eternal salvation unto all them that obey Him.' (Hebrews 5:9). All who obey the Lord must first take their stand firmly on the side of Christ Jesus the King and then continue to be obedient to God's law as announced by the King."

Also to the language on page 198, containing the following:

"All nations have some kind of religion which is a reproach upon the name of God. The controlling or ruling elements of the nations are, to-wit, religious, political and commercial. Such ruling powers have willfully violated or broken God's 'everlasting covenant' concerning the sanctity of life, and God declares His purpose to punish them for the same."

I also desire to call the Court's attention to the matter contained on page 196, beginning at the word, or heading, "Refuge" and extending to the last paragraph on said page:

"Any ceremony or practice indulged in, and which



is contrary to the will of Almighty God, is religion, because such is always prompted by the chief of demons, Satan, Nazism, Communism, Fascism, and suchlike, are against God, and their practices are religious. The religious institutions called 'church denominations' teach doctrines that defame God's name and oppose His kingdom; for instance, such doctrines as the immortality of all souls; conscious suffering of the dead in 'purgatory' or 'hell torment'; the doctrine concerning Peter as the foundation of the church, and that he has successors on earth; the doctrine of worshipping images, and suchlike."

Also to the following language on page 194, under the heading "Tribulation":

"Christ Jesus was enthroned as King in 1914 and came to his temple in 1918, and from that time onward tribulation upon the earth has continuously increased, and in that time the Devil has done all within his power to turn the people away from God and His kingdom."

Is this not likely to cause disloyalty to this country and its institutions and its flag?

I would like also to call the attention of the Court to the following language on the same page (p. 194).

"They want something different from the husks which they have been receiving from religious institutions."

I desire to call the attention of the Court to the language on page 186 and 187, beginning with the heading "Identification" and extending down to the last paragraph on page 187. Also to the following language appearing on page 182 of the said book:

"They will not be a part of the Holy City, or THEOCRATIC GOVERNMENT, because that is spiritual; but they will occupy the high position of visible representatives of the Holy City, THEOCRACY, and will govern or rule the people of the earth, and all the people will look to them to receive instruction from them."

This language is furthering the theory that there is no rightful government other than the THEOCRACY.

I wish to call the attention of the Court to the language on page 179, beginning near the bottom, which reads as follows:

"Therefore The THEOCRATIC GOVERNMENT, the Holy City, will always be invisible to human eyes, but will exercise absolute control over all things in the earth."

And under the heading "Visible" I invite the Court's attention to the following language:

"When God set up His typical theocracy with Israel and ruled over Israel as his chosen people, none of the Israelites saw Him; yet they observed His power."

The purport of this and other language is that the reign of Jesus Christ on earth began in 1914, but that Christ was invisible, ruling through visible agents. This is the old doctrine of ruling divine right, regardless of the consent of the governed which the founding fathers placed upon our government.

I desire further to call the attention of the Court to the language at page 178, beginning about the mid-

dle of the page and extending to the heading "Invisible" on page 179, for the purpose of showing the nature of the contentions of the proponents of the Jehovah's Witnesses organization:

"Faithful men of old, from Abel to the last one of the prophets, cannot have a part in the 'first resurrection', for the reason that they died before the heavenly way was opened and before anyone was called to the heavenly kingdom. The life of those faithful men shall be forever human on the earth. They have a better 'resurrection', however, than those of the human race in general have who are favored in the general resurrection. Those faithful men of old had their trial of faith before the purchase price or ransom was made available, but they had full faith in God's promise and they shall receive the benefit of the ransom sacrifice because of their faith and faithfulness. Other human creatures, that lived on the earth for a season and died, are held in the memory of God and shall be resurrected, but not on equal terms with those faithful men of old who received God's approval before they died."

I also desire to call the Court's attention to the following sentence on page 177:

"John the Baptist was one of the great prophets, and he can never be in heaven, because he had died before the crucifixion of the Lord: 'Verily I say unto you, Among them that are born of women there hath not risen a greater one than John the Baptist: notwithstanding, he that is least in the kingdom of heaven is greater than he.' Matthew 11:11."

"All those men died and went out of existence into the grave, or 'hell', but all are held in the memory of Almighty God, and whom He will resurrect from the dead in His own due time and according to His promise. Those men had faith in the resurrection, and therefore they endured the great fight of affliction even unto death in order 'that they might obtain (the) better resurrection.' Hebrews 11:35."

I wish to call the Court's attention to matter contained on page 70, under the title "Where are the Dead?" and extending down to the bottom of page 71 and at the top of page 72:

"When Adam died, where did he go? Being a willful wrongdoer, he was destroyed. He chose to serve the Devil and, being wicked, he suffered destruction as the judgment of Almighty God provides. (Psalm 145:20). Did not Adam's soul survive somewhere? No; for the reason that Adam did not possess a soul. Adam was a soul, a man, a breathing creature, and when he died it was the soul that died, and that meant everything concerning Adam. Adam, therefore, went completely out of existence. "The doctrine of the 'inherent immortality of all souls' is a lie, the great lie first told by the Devil, 'that old Serpent', for the very purpose of deceiving mankind and bringing reproach upon the Almighty God. That lie of the Devil brought about the death of Adam and millions of others since. Hence Jesus said of the Devil that 'he was a murderer from the beginning, and abode not in the truth, because there is no truth in him.'"

I wish also to call the Court's attention to matter contained on page 333, beginning about the middle of

the page and extending to the bottom of the page, showing the contention of Jehovah's Witnesses, that the Theocratic government began in 1914 and 1918 and showing that they teach that there is no rightful government other than the Theocratic government:

"The nations that have called themselves 'Christians' or 'Christendom' have been before the Lord Jesus the Great Judge for judgment since the coming of the Lord Jesus to the temple in 1918. The undisputed facts show that all such nations called 'Christendom' are now properly labeled as 'backsliders', because not one of those nations now advocates or supports the kingdom of Jehovah God under Christ the King. On the contrary, all nations are against God and His kingdom and propose to rule the world by selfish men. The founders of the United States of America fled from religious persecution in Europe and located in America, \* \* \*."

Also the matter contained on page 342 showing the same theory, beginning with the heading "Vindication" and extending to the bottom of the page:

"Soon the 'princes' and the 'great multitude' will be associated with that holy nation in carrying out Jehovah's purpose. The THEOCRATIC GOVERNMENT is of greatest importance because that government will fully vindicate Jehovah's name. God ministers salvation to life through that government, and there is no other possible means of obtaining life everlasting. \* \* \* Salvation is not for the wicked at any time. 'Far from the lawless is salvation, for thy statutes have they not sought.' Psalm 119:155, Rotherham."

I also desire to refer to matter contained at the top of page 325, reading as follows:

"At the appearing of the Lord Jesus at the temple in 1918 He judged His people and separated the approved ones from the others and sent forth these approved ones as witnesses to the name of Jehovah 'that they (might) offer unto the Lord an offering in righteousness' to-wit, the praise of their lips. Malachi 3:1-3, Hebrews 13:15."

The purpose of these quotations and references in the book entitled "CHILDREN" is to show that the teachings of the appellant and those he serves is that there is no rightful government existing since 1914, except the alleged THEOCRACY GOVERNMENT, and just who is in charge of that and where the temple is and what evidences there exists of such government is uncertain. However, it is certain that they do teach that the present government of the United States is wrongful: that it is controlled by demons and that the flag represents demonical government; that it is idolatry to salute the flag because it represents something other than THE THEOCRACY and that it is some sort of substitute for the rule of THEOCRACY.

By Chapter 155, Laws of 1942, the legislature required all boards of trustees of tax supported free public schools and all other state supported schools of the state of Mississippi are authorized and hereby directed to instruct and require teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once a week during the school year and sets out the pledge of allegiance as follows:



"I PLEDGE ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA, AND TO THE REPUBLIC FOR WHICH IT STANDS, ONE NATION, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL."

This is in harmony with Chapter 435 of 56 Statutes U. S. approved June 22, 1942, U.S.C.A. Title 36, Sec. 171-178.

The state clearly has the right to teach the children of the state loyalty to their government and to the flag which symbolizes it. The flag is not a representative of any false God, any idol, or any image within the prohibition of the Bible, forbidding the worship of other Gods than the true God. The state has the right to require of its citizens loyalty and service and allegiance and no belief contrary to the power of the state in the lawful scope of its police powers can be ignored on the ground that it is contrary to the teachings of the Bible.

The constitutional provisions relied on by the appellant permit every person to have their own religious belief and is not limited to the Bible or the Christian religion, or to any denomination thereof, or to the Jewish religion, but to every religion whatsoever.

The power of the state to make laws is not limited any more than the necessity of giving effect to the various provisions of the Bill of Rights are concerned and all the authorities as will hereafter be shown draw the distinction between a **religious belief** and **actions taken by the individual** and show that the constitutional provisions are religious freedom and



freedom from restraint, known as freedom of speech and of press and of assemblage.

I desire to call the Court's attention to *George Reynolds v. United States*, 98 U. S. 145, 25 L. ed. 244; *McIntosh v. United States*, 283 U. S. 605, 75 L. ed. 1302; *Schenck v. United States*, 249 U. S. 47, 63 L. ed. 470; *Schwimmer v. United States*, 279 U. S. 644, 73 L. ed. 889; *Hamilton v. Regents University*, 293 U. S. 245, 79 L. ed. 343; *Nichols v. School Board* 110 A.L.R. 377, 7 N.E. (2nd) 577; *Minersville School Dist. v. Gobitis*, 310 U. S. 586, 84 L. ed. 1375.

One of the most recent cases bearing on the subject is the case of *Rosco Jones v. City of Opelika*, and three other similar cases from other states, reported in 86 L. Ed. 1691 page 584, of 216 U. S. Reports, wherein it was held:

"Constitutional rights are not absolute rights existing independently of other privileges protected by the same organic instrument."

"The exercise of the constitutional rights of freedom of religion and freedom of speech and press may properly be limited by the appropriate legislative body to times, places, and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and order."

It is also held in the same case:

"A state or municipality may, without violation of the constitutional guaranties of freedom of religion and freedom of speech and press, exact a reasonable and non-discriminatory license fee from religious adherents engaged in the sale of religious books

and pamphlets through the ordinary methods used in commercial canvassing."

Every constitutional right has its limitations and is subject to reasonable regulations by the legislature of the states and by congress within the jurisdiction of the Federal government. It was never the purpose of the Bill of Rights to prevent appropriate and reasonable regulations designed to secure the public peace, health, safety and general welfare.

We come now to a consideration of Chapter 178, as applied to the present offense by the appellant. The preamble of the said statute show that in the opinion of the legislature the situation developed by the war required unity in all the people of the state and that the time had come in which the public safety and peace required restraints upon actions that in peace times might be lawful. It is well known that in war there is grave danger of disuniting the people, whereas there should be complete unity of thought and action as far as it is possible to be obtained in preserving the security of constitutional government from destruction by the dictatorial governments with which we are at war and who are powerful in all the essentials of war, presenting to us a situation of grave danger requiring the surrender for a limited period of time of some of the peace time rights that we have in times of peace.

Section 1 of Chapter 178, which governs the present prosecution as applicable to the present situation reads as follows:

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach,

teach, or disseminate any teachings, creed theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature \* \* \* or by distribution of any sort of literature, or written or printed matter, designed and calculated to encourage \* \* \* disloyalty to the government of the United States or the state of Mississippi, \* \* \* or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment, etc."

By section 5 of the Chapter, the act is limited to the duration of the present war.

It has long been the policy of the state to display the flag in public schools and to have the lessons of patriotism and loyalty to the principles of our government taught in the schools. Many years ago civics was added to the curriculum of the public schools and in 1916 the legislature enacted a statute that required all the boards of trustees of public schools of the state to have the flag erected near the building or displayed within the building and prohibited by law disrespect by word or act for the flag of the country. See Code 1930, Sec. 930 (bringing forward Ch. 118, Laws of 1916).

By Chapter 59 of the Laws of 1935, Section 6544 of the Code was amended, which had been in existence from 1924, so as to require the schools to display the flag and to teach the meaning and uses of the flag and the lessons of patriotism and principles of the government to all students, such lessons should be taught not less than once in each week. See Laws 1924, Chapter 283.

By Section 6630 of the Code of 1930, it was made the duty of the trustees of each school to see that these laws are complied with. It is not competent therefore for any person to teach children to disregard these statutes, regardless of what they may believe about the rightfulness of such action. The flag is in no sense, properly considered, representative of any divinity, unless the state itself be treated as a divine institution, as taught by the Christian scriptures. However, it is the government and is a necessary institution for the welfare of the race and for the protection of society from the defamation of both individuals and nations. See *Halter v. Nebraska*, 205 U. S. 34, 46, 51 L. ed. 696-701 27 S. Ct. 419, 10 Anno. Cas. 525, Affirming 74 Nebr. 757.

I desire to quote here from an article appearing in the *Bill of Rights Review*, Fall No. 1941, at page 152, entitled "OUR FLAG. ITS SIGNIFICANCE," reading as follows:

"Our Flag! The most beautiful in design and symbolism in all the world. As it floats out into space, caressed by the breezes that blow, it symbolizes a glorious delivery from the oppression and suffering back of the Colonies; back of the Declaration of Independence; and back of the Constitution which moulded into form our great Nation, known to all the world as the United States of America.

"It stands as the Emblem of Religious and Civil Liberties.

"To pledge allegiance to that flag and to the Republic for which it stands, in no manner whatsoever transcends one's religious liberty.

"Religious liberty is one of the most important, if

not the very first motive and objective of all the suffering and deprivations endured in order to obtain that freedom.

"We reverence the Bible as the Word of God, but we do not worship it. It teaches us about God as our Creator and the Heavenly Father, who loves and cares for His own.

"We do not reverence the flag in the same sense that we reverence Deity. We salute, honor and respect our flag as the emblem of all that entered into the Birth of our Nation, and of the very foundation upon which our Religious and Civil Liberties rest. It stands for that which secured and protects our Religious Liberty, and that in itself is a recognition that one's Religious Liberty is above all else.

"In countries where all liberty has been taken away from the people, they are made to appreciate what it means to have a flag which really stands for something; which insures the right to worship God unmolested. Let us ever remember, however, that our flag is in no sense whatsoever an image to be worshipped; nor is it a likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; and to salute that flag in a beautiful patriotic gesture is in no sense a bowing down to or worshipping it or that for which it stands.

"To respect our Flag and to salute it, as I confidently believe all true Americans are instinctively glad to do and to pledge allegiance to the Republic for which it stands, comes from a noble human nature and citizenship."

In the case of *Minersville School District v. Gobitis*, 84 L. Ed. 1375, 310 U. S. 586, the Supreme Court of the United States in a well reasoned and elaborate opinion considered the right of the state to require students in public schools to go through the ceremony of saluting the flag and held that it in no wise conflicted with any religious belief properly understood in the constitutional sense. That case was not only argued by the Gobitis' children and father, but a brief was also filed on behalf of the Gobitis children by the Civil Liberties Union and by the Bill of Rights Committee of The American Bar Association who filed briefs as *amicus curiae* in addition to the able brief filed by Judge Rutherford and Mr. Covington. The case was most maturely considered and the right of the public to have the flag saluted was upheld. The question was not entirely new to the Supreme Court of the United States at that time nor to the other courts of the country.

In *Nichols v. Lynn*, 7 N.E. Second Series, 577, 110 A.L.R. 377, it was held in an able opinion by the Massachusetts Supreme Court that requiring the flag to be saluted in a ceremony for that purpose in the schools was not an infringement in any sense upon the constitutional guaranty of the freedom of religion.

In the case of *Leoles v. Landers*, 184 Ga. 580, 192 S.E. 218, it was held that a similar statute of Georgia did not violate the constitutional guaranty of religious freedom. An appeal was taken from that case to the United States Supreme Court and in 302 U. S. 656, 82 L. Ed. 507, certiorari denied. Review was also denied. In the case of *Herring v. State Board of Education*, 117 N. J. L. 455, 189 Atlantic 629, and *Peoples v. Sandstrom*, 179 N. Y. 523 to 530, 19 N. E. (2nd) 840, 842, appeals were taken to the United States Supreme Court and dismissed as not present-



ing a substantial question. See 303 U. S. 824, 82 L. Ed. 507 and 1087. These questions were fully considered in these courts and the right of the state to encourage patriotism and honor for the flag as a training for the children in civic virtue and righteousness was upheld and no constitutional rights of the citizens were infringed by these statutes of the said states.

I desire to quote from the opinion of the Georgia Supreme Court ... 184 Ga. at page 583, also pages 585 and 586, as follows:

"The General Assembly of 1935, on March 26, 1935, by resolution provided: 'Whereas, in order to perpetuate the principles of free government and preserve the high ideals upon which this Nation was founded and upon which our constitutions rest, it is necessary that the fundamental principles of patriotism and the ideals of Americanism be inculcated into and cultivated in the minds of our children; and whereas the public school teachers and other employees of this State wield an influence upon the lives and minds of Georgia children second only to that of their parents; and whereas the State has been and is being flooded with propaganda and literature which seek the destruction of the high principles of government which ought to be perpetuated: Therefore, be it resolved by the General Assembly of Georgia (the Senate and House of Representatives concurring), that every teacher in the public schools of this State, whether elementary, high school, college or university, and all other employees of the State or subdivision thereof, drawing a weekly, monthly, or yearly salary, shall, before entering upon the discharge of their duties, take and subscribe a solemn oath to uphold, support, and defend the constitution and



laws of this State and of the United States, and to refrain from directly or indirectly subscribing to or teaching any theory of government or economics or of social relations which is inconsistent with the fundamental principles of patriotism and high ideals of Americanism." (Pages 583 and 584) \* \* \*

After referring to questions for decision and argument the court said:

"With the foregoing contentions we cannot agree. The United States is a democratic country with republican form of government. Code, Sec. 1-407. It is a land of freedom. However, those who reside within its limits and receive the protection and benefits afforded to them must obey its laws and show due respect to the government, its institutions and ideals. The flag of the United States is a symbol thereof, and disrespect to the flag is disrespect to the government, its institutions and ideals, and is directly opposed to the policy of this State." (Page 585) \* \* \*

"Every state in the Union has in its constitution a provision denying to the civil authority the right to control or interfere in any way in matters purely ecclesiastical. Each individual within the jurisdiction of the United States . . . has a right to determine for himself all of those questions which relate to his relation to the Creator of the Universe. No civil authority can coerce him to accept any religious doctrine or teaching, or restrain him from associating himself with any class or organization which promulgates religious teaching. Whether he shall adopt any religious views, or, if so, what shall be the character of those views, and the persons with whom he shall associate in carrying out the

particular views, are all questions addressed to his individual conscience, which no human authority has the right, even in the slightest way to interfere with, so long as his practices in carrying out his peculiar views are not inconsistent with the peace and good order of society. *Mack v. Kime, Swafford v. Keaton, supra.* Under the Georgia Constitution, 'All men have the natural and inalienable right to worship God, each according to the dictates of his own conscience.' " (Page 586).

But the right to worship is not to denounce others who disagree with one's views. Such denunciation is calculated to lead to a breach of the peace.

Civil Liberty is safeguarded by the Federal Constitution in the Fourteenth Amendment, but such liberty secured by law is liberty regulated by law. The word liberty as used in the Fourteenth Amendment to the Federal Constitution such as freedom from all restraints, except such as are imposed by law. In *Re: Marshall* 102 Fed. 323, 324; *Slaughterhouse Cases*, 33 U. S. (16 Wall) 36, 127; 21 L. Ed. 394.

Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will, it is freedom from restraint under conditions essential to the equal enjoyment of the same rights by others. It is then liberty regulated by law. Liberty in this country is not understood to be absolute, but is regulated by law so that each person in society may have equal rights and an equal freedom. It must be then that the constitutional liberty and freedom of speech, of the press, and of religious worship, and freedom of assembly are the rights that the individual has, to be exercised under such regulations as are reasonable and calculated to serve the purpose of organized society, regulated by law.

There must be some tribunal which has authority to decide whether a given statute comes within the prohibition or not and if a prohibition is made, or a regulation is made, within the competent power of the legislature of the state, the individual may not set up his individual judgment against that of the legislature.

There are limits that have been pointed out in numerous cases which show that liberty may be reasonably regulated by law. If the appellant can teach or distribute works which do teach that present government is a demonized or demon-controlled government, contrary to the very right, then there is an end of government and each individual would decide for himself in each case whether his conscience warranted him in disregarding the law or whether he should obey it and, consequently, there would be an end to government.

The literature involved in the cases before the court shows that the works distributed do teach that there is no rightful government now in existence and that such governments as do exist are sinful governments, controlled by demons and that it is a deadly sin to honor the government or those who administer its functions, are sins punishable by eternal damnation and that those who salute the flag would be punished, provided they have taken the covenant to obey the laws of Almighty God.

Under our constitutional system, every person in the same situation is governed by law, a law that must apply equally to everybody and if the appellant can escape, because he has taken a pledge that he conceives to be violated, and may refuse to obey the law, then every other person may refuse to obey it also. The prohibition in the Scriptures against having other gods before Almighty God, or bowing down to

images, applies to all people and it is as sinful for one to engage in idolatry as it is for another.

As pointed out in our brief in *R. E. Taylor v. State*, now before the court, the Supreme Court of the United States has clearly traced the history of the meaning of the constitutional provisions involved in this suit and has held that the rights secured by these amendments do not extend to disregarding laws constitutionally passed by the state, prohibiting actions deemed to be hurtful on reasonable grounds by the legislature. The rule is that the individual's rights thus secured are to entertain his own opinions of religious obligation and religious duty, but that he may not do any act that is prohibited by law nor shall he counsel others to disobey laws enacted within the constitutional power of the state or the nation. The Fourteenth Amendment, while it secures liberty from arbitrary action, it does not deprive the state of the right to judge of actions as distinguished from thought which the state thinks should be prohibited for the common good or for the general welfare.

This brief is supplemental to the brief filed by this office in *R. E. Taylor v. State*, now before the court, and I do not deem it necessary in this case to enlarge upon the argument there made on the constitutional features of the case. Enough has been shown in the evidence to show that the appellant violated the statute. The literature that he distributed, regardless of what his own intent was, was calculated to and did teach that it was wrong and sinful to salute the flag of our country and the jury was warranted by the evidence in finding that he was guilty, because he admitted in his own evidence that he distributed the book involved and the other literature published by the organization which he represented and that his

business was to teach, through distribution of books, the doctrines contained in the book.

When put on the stand, the appellant tried to shield himself from the consequences of violating the act by saying that he left it to each individual to read the book, study the reference to the Scriptures therein contained, and to act on their own judgment. He cannot escape the consequences of violating the act upon any such theory. The evidence shows that he and his wife and son and others were engaged in Warren County and in the City of Vicksburg in distributing this literature and that the appellant had been ordained by a society whose literature he distributed as a minister of their beliefs, and his card showing his authority as such minister is in the record sent up with the transcript.

Appellant takes the position, as I understand his brief, that this is a Christian nation and that the precepts of the Christian Bible are superior to any law of the government and relies upon the Church of the Holy Trinity vs. United States, 143 U. S. 457-472, 36 L. Ed. 226, for this position. The case does not sustain his contention at all for that question was not in any manner involved in the case.

The question before the court was whether or not Chapter 164, 23 Statutes at Large, 332, prohibited the hiring and payment of a Minister of the Gospel and bring him across the seas, the congregation paying his passage into the country. Section 1 of that Act provided as follows:

"That from and after passage of this Act, it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage aliens, any foreigner or foreigners, into the

United States, its territories or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its territories or the District of Columbia."

The court reasoned that the Act did not prohibit the religious congregation from contracting with a foreign Minister of the Gospel and paying his transportation, or part of his salary in order to induce him to come and serve the congregation in a religious capacity. The court announced the purpose of the statute and held that it did not prohibit such act of hiring a minister of the Gospel because it was not within the intendment of Congress in enacting the law to include Ministers of the Gospel although they were hired to render a service to the congregation.

By way of argument and illustration the court, speaking through Justice Brewer traced religious expressions in the Laws and Constitutions and deduced therefrom that a majority of the nation was a religious nation but did not limit that religion to the Christian religion, nor did they declare it beyond the power of Congress to pass a law that would have included Ministers of the Gospel if they had been expressly named. In the concluding paragraph on page 513 of the Official Edition and page 232 of the Law Edition, using this language, it was said:

"Suppose in the Congress that passed this Act some member had offered a bill which in terms declared that, if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country and enter into its service as pastor and



priest; or any Baptist church should make similar arrangements with Rev. Mr. Spurgeon; or any Jewish synagogue with some eminent Rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment, can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was in effect the meaning of this statute. The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the Legislature used general terms with the purpose of reaching all phases of that evil and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that however broad the language of the statute may be, the act, although within the letter, is not within the intention of the Legislature and therefore cannot be within the statute."

While this case does not sustain counsel's argument it does have important rules of construction of statutes that should be borne in mind when construing Chapter 178, Laws of 1942. For instance, in the third syllabus, it is said:

"Among other things which may be considered in determining the intent of the Legislature is the title of the Act, which may help to interpret its meaning."



In syllabus five it is said:

"Another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body."

In the seventh syllabus it is said:

"No purpose of action against religion can be imputed to any Legislature, State or Nation."

When we take the title of Chapter 178, Laws of 1942, it is clear that the Legislature was not dealing with religion, true or false, but was dealing with evils recited in the preamble of the Act. The Title to the Act reads as follows:

"AN ACT TO SECURE PEACE AND SAFETY OF THE UNITED STATES AND STATE OF MISSISSIPPI DURING WAR; TO PROHIBIT ACTS DETRIMENTAL TO PUBLIC PEACE AND SAFETY, AND TO PROVIDE PUNISHMENT FOR SAME."

The rule that the title should give weight to the interpretation of the statute is especially valuable in Mississippi by virtue of the Constitutional provision contained in Section 71 of the Mississippi Constitution 1890, which reads:

"Every bill introduced into the legislature shall have a title, and the title ought to indicate clearly the subject-matter or matters of the proposed legislation. Each committee to which a bill may be referred shall express, in writing, its judgment of the

sufficiency of the title of the bill, and this too, whether the recommendation be that the bill do pass or do not pass."

It should be further given weight to the interpretation of the statute that Section 40 of the Mississippi Constitution 1890 requires members of the Legislature, before entering into the discharge of their duties to take an oath, as follows:

"Members of the legislature, before entering upon the discharge of their duties, shall take the following oath: 'I, ———, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and of the state of Mississippi; that I am not disqualified from holding office by the Constitution of this state; that I will faithfully discharge my duties as a legislator; that I will, as soon as practicable hereafter, carefully read (or have read to me) the Constitution of this state, and will endeavor to note, and as a legislator to execute, all the requirements thereof imposed on the legislature; and I will not vote for any measure or person because of a promise of any other member of this legislature to vote for any measure or person, or as a means of influencing him or them so to do. So help me God.'"

It must be presumed therefore, that the members of the Legislature were familiar with the provisions of the Constitution and that they intended to abide by them and that they did so.

I do not desire to follow counsel through his brief in citing and arguing the force and reasonableness of passages from the Bible quoted by him. If I thought this was a prosecution directed at the freedom of re-

ligious worship, I would not represent the prosecution in trying to sustain a suit so directed. I am strong for the freedom of religion, freedom of speech, freedom of the press, and right of assemblage and discussion of matters affecting the citizenship or to seek redress of grievances within the Constitutional limitations, limited as they are to reasonable legislative regulation, often a right that is given by the Constitution to the individual is subject to reasonable regulation as distinguished from arbitrary legislation, for the Legislature must have power to enact suitable laws to promote the general laws of public safety, public health, and similar things so long as such regulations are reasonable.

Section 18 of the Mississippi Constitution 1890 provides:

"No religious test as a qualification for office shall be required: and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The right hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state."

It will be noted from the language used in this section the rights hereby secured shall not be construed to justify acts of licentiousness, injuries to the morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state. This reservation is implied in all of the provisions guaranteeing the freedom of speech,

of the press, and of worship, whether written in the Constitution or not.

Section 13 of the Constitution provides:

"The freedom of speech and of the press shall be held sacred; and in all prosecutions for libel the truth may be given in evidence, and the jury shall determine the law and the facts under the direction of the court; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted."

It will be noticed in the latter part of this section that if the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. It is clear then that none of the provisions of Chapter 178 abridged any religious freedom when properly understood, but religious freedom is to be exercised in such manner as not to endanger the public safety or injure the public in any way and does not warrant the disobedience of laws enacted within the legislative power. In such cases it must be recognized that all liberties are without substantial value unless there is organized government to give them effect as against encroachment by other individuals or corporations, either public or private. Cases dealing with this subject are too voluminous to analyze in detail but through all runs the doctrine of reason. There is a trail of principle through the forest of precedent. Precedents are guides, and if contrary to principle, should not stand, and the courts recognize this by overruling cases erroneously decided. There is much force in the language used by Judge Sibley of the Fifth Circuit Court of Appeals in the case of *Stone v. Interstate Natural Gas Company*

and Interstate Natural Gas Company v. Stone (2 cases) 103 Fed. (2) 544, affirmed in 84 L. Ed. 442, wherein he said:

"It would be tedious to analyze the cases and impossible fully to reconcile them. The principle of stare decisis in constitutional interpretations has recently received shattering blows in the Supreme Court, and especially in the field of immunities from general taxation. The increasing social burdens assumed by our governments, both state and national, will require increasing and more searching taxation for their support. Any immunity from equal general taxation appears more and more inconvenient and unjust. The recent re-examination of the basis for such immunities has re-examination of the basis for such immunities has resulted in an upheaval. The current of authority has been turned. For the judicial navigator the cases are no longer the beacons marking out a fixed if tortuous channel. He must for awhile fix his eyes upon the Constitution as the Pole Star of his firmament and steer his course rather by principle than by precedent."

In other words, it would be a voluminous and tiresome task to have the Court wade through all of the many cases cited and noted upon the subject of religious freedom, freedom of speech and freedom of the press, but the principle runs through all of them that the rights secured are not without limit but may be regulated in reasonable ways to secure the benefits of government.

Counsel also cites the case of United States v. Carolene Products Company, 304 U. S. 144, 152, 82 L. Ed. 1234. This case deals with the power of the Federal government in its legislative capacity and shows the

extent of governmental power where it is not restricted by specific constitutional limitations. The state has the same power to legislate within its own field where not restricted either by state or Federal Constitutions, and the power is extremely broad and comprehensive. It is held in this case that equal protection does not compel a state to prohibit all like evils or none, but a legislature may hit at an abuse which it has found even though it has failed to strike at another. It is also held in this case in the twelfth syllabus:

"Regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of facts made known, or generally assumed, it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators."

In the thirteenth syllabus it is held:

"Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts **beyond the sphere of judicial notice**, such facts may properly be made the subject of judicial inquiry, and the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." (Emphasis supplied).

The Court of course takes judicial notice of the declaration of war upon the United States by Germany, Italy, and Japan and declaration of war upon these nations by the United States and the Allied nations. Facts which the court judicially knows have as much



probative force as proof submitted from the witness stand and, if the facts which the Court judicially knows are sufficient to create a basis of legislation, no proof is needed and none would be permissible as to the facts of which the Court takes judicial notice.

The recent case of *Wickard v. Filburn*, 87 L. Ed. U. S. (Advance) page 57 shows how far legislative power may go in dealing with public needs and that the power can only be restrained by express constitutional provisions or by the necessary implication of express constitutional prohibitions. The state's power in its field, exists to the same degree as the power of the national government in its field, where not restricted by constitutional provisions.

A state may, consistently with the constitutional right of free speech, forbid picketing of the place of business of one who has entered into a contract with an employer of union labor for the construction at another place of a building unconnected with such business. *Carpenters, etc., Union v. Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807, 86 L. Ed. 1143. In the third syllabus of the above case it is stated:

"It is not for the Supreme Court of the United States to assess the wisdom of a policy underlying a state law which the state may constitutionally enact."

Where the state and the nation may both enact laws upon the subject and intention of the Congress to exclude the state from asserting their police powers must be clearly manifested before the state statute can be stricken down and impaired. *Allen-Bradley Local, etc., v. Wisconsin Employment Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154.

Counsel in his brief, in this case, took rather a dis-



paraging attitude toward the State of Mississippi and the affirming Judges who passed upon these cases as though this state was the only state in which the prosecution against parties, claiming to be Jehovah Witnesses, had violated local laws under their untenable claim that they cannot be restricted of their religious liberties by state laws, and that man-made laws can not rightfully control them, I only desire to say that from the many cases cited in his brief and in the news reports of the press and radio it appears that there have been many prosecutions against them in many states. Some may be without merit. Nevertheless, the fact exists that such prosecutions and legislation is not limited to the state of Mississippi. There is no reason to assume that Mississippi is hostile to any religion because all religions are tolerated so long as they abide the law, but when a person deliberately assails all organized religion and all organized governments they have little right to expect a toleration which they do not give. Mississippi is in what is sometimes called the "Bible belt," where the Bible is highly esteemed and constitutes the guiding principles of religion and moral excellence, and every kind of denomination may freely worship in its own way; but when the church of an individual is assailed as being "Demon controlled" and "deceptive" in its purposes and that its ministers are "deceivers of the people" a spirit of resentment naturally arises because most people look upon their church as something holy and which should not be denounced, and look upon their religious leaders as being of the most holy and best type of men. They do not pretend that men do not err in religion but to have them denounced as these pamphlets and books and phonographs do, naturally results in occasional violence. The better class of citizens think the law ought to deal with such matters as

tend to disturb the peace and promote violence. This is shown by the testimony of the Chief of Police in the case of *Betty Benoit v. State*, where a majority of the citizens of the town was calling on the law to prevent disloyalty and denunciatory publications about the nation and the flag. I do not justify all that was done. It is not my purpose to do that in any case where the officers exceed the proprieties of their office. Nevertheless, the acts of the appellants tend to promote violence and some cases have been reported where they have been treated with rough methods. This is a good reason that such laws as we have now before the court should be upheld. It must be remembered that all people do not live in large cities with ample police protection and ample law enforcement.

Counsel, also in his brief, seemed not to understand and to belittle the argument before the Mississippi Supreme Court and the Court's holding in the controlling opinion, that by reason of having two races living together of approximately equal numbers and having degrees of race pride and race prejudice, required or made pertinent legislation to prevent, during the war period, disturbances of racial character.

The Court in construing the statutes must consider the situation and conditions which exist at the time and prior to the enactment of legislation as a reasonable basis for enacting it.

The Court judicially knows that prior to the Civil War a system of slavery existed in Mississippi and in other Southern States and that often harsh and tyrannical laws were enacted to make the system effective, which laws were harsh and often unjust; that this system of slavery and its consequences brought on the

Civil War in which the South was defeated after a protracted and exhaustive struggle which consumed its resources almost to the uttermost and reduced its man power by many thousands; that after the war was ended Reconstruction Government was set up in the state, administered by appointees from the National government using military police to carry out these policies. Negroes recently made free but ignorant and without civil fitness were given the right of suffrage and, in fact, dominated. In taking the state oath they had little comprehension of civic policies or governmental obligations. It is said that there were more men enlisted in the Union Army from Mississippi than there was in the Confederate Army. Most of those who entered the Union Army were slaves and fought against their recent masters. Naturally, these things engendered resentment, prejudice and a multitude of things not designed to the healthful growth and progress of the state. The generation which then lived have all passed to their rewards and the descendants of the third and fourth generations are now moving and controlling factors in life in this state. For a period of more than fifty years these two races have lived together in harmony, although the colored race has had but little participation in shaping and administering the laws of the state. Naturally, it is easy to stir their passions and resentments. A time of war is a period where violence would likely happen should agitators, either domestic or foreign, be permitted to create a spirit of disunity and disloyalty to the country. The present generation in the South realize that slavery was a mistake; that it was a frightful wrong and are glad that all men in this state are free. They realize that it was a mistake to attempt to secede and in the present Constitution (1890) there was adopted the principles of the Thir-

teenth Amendment. See, Section 15, Constitution 1890, which reads,

"There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crime, whereof the party shall have been duly convicted."

and solemnly renounced the right of secession. See, Section 7, Constitution 1890, which reads as follows:

"The right to withdraw from the Federal Union on account of any real or supposed grievance, shall never be assumed by this state, nor shall any law be passed in derogation of the paramount allegiance of this state to the government of the United States."

Furthermore, the state recognized the negro as a citizen and has the right to appeal from registration not granted. See, Section 248, Constitution 1890, which reads as follows:

"Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same."

I am fully aware that there has been more excoriation of the state in the North than there should be about the great problems confronting the people of this state. The Reconstruction measures have been in a general way described by Claude Bowers in his book **THE TRAGIC ERA** and by Judge Stryker of New York in his **LIFE OF ANDREW JOHNSON**, but full description of the terrible conditions which the South had to contend with are not known over the country, but those who lived in that period of time have written in local historical publications much of the his-

tory and its details. See, **GARNER'S HISTORY OF RECONSTRUCTION; RECONSTRUCTION IN EAST AND SOUTHEAST MISSISSIPPI** by Captain W. H. Hardy, 8 Mississippi Historical Publication, pp. 137 to 151; also, 7 Mississippi Historical Publication, pp. 199 to 215, and on the same subject in Vol. 4, Mississippi Historical Publication, pp. 105 to 132; **SUFFRAGE AND RECONSTRUCTION IN MISSISSIPPI** by Honorable Frank Johnson, former Attorney General of Mississippi, 6 Mississippi Historical Publication, pp. 141 to 244; **FROM ORGANIZATION TO OVERTHROW OF PROVISIONAL GOVERNMENT IN MISSISSIPPI** by Captain J. S. McNeilly, 1 Mississippi Historical Publication, Centennial Edition, pp. 9 to 403; **CLIMAX AND RECONSTRUCTION IN MISSISSIPPI** by Captain J. S. McNeilly, 12 Mississippi Historical Publication, pp. 283 to 473; **WAR AND RECONSTRUCTION IN MISSISSIPPI** by Captain J. S. McNeilly, 2 Mississippi Historical Publication, Centennial Edition, pp. 165 to 568, published in 1918. There are numerous articles in the Mississippi Historical Publication on reconstruction in various counties but I will not set them forth. I cite these matters for the purpose of showing the tragic conditions in which Mississippi was involved between 1865 and 1890 and by comparison a relative harmony between the races since 1890 so that those who have the will may read and know the truth. This background is the condition which reasonably warrants the enactment of the present statute, because, if the wrongs of the past, real or fancied, are dug up and paraded before the two races in Mississippi during the war period it would create a condition which might be very dangerous, especially should the enemy with which we are at war be able to land on our shores or send its emissaries throughout the country, including this

state, to stir up strife. The best elements of both races are trying to work harmoniously to make conditions better and life more secure in the state. In 1923 the State Bar Association published a pamphlet against lynching (which the most prominent citizens of the white race in the South deplore), and ten thousand copies of this pamphlet were distributed to appropriate persons throughout the state and had a salutary effect in an educational way upon the subject. The South, we feel, has less sympathy in its troubles with these problems than it should have, but we have tried to secure justice and liberty for all; and education and industry are secured and promoted as best they may be under the conditions from which we are trying to emerge.

Counsel's reference in his argument that the state offered no proof of a clear and present danger existed to justify its laws. I think that sufficient answer to this is that the Court judicially knows that war itself is a present danger and that we must make many sacrifices and forego many rights to win the war and preserve our liberties after peace shall come. Hundreds of ships have been sunk and we are assured that the struggle will be long and bitter, although we are confident that we will win but it will be only by sacrifices and that these sacrifices must be made by all of our population.

I desire to have this brief and the brief in the R. E. Taylor case considered as brief in the case of Betty Benoit v. State, a companion case, to be decided along with these cases.

Respectfully submitted,

*Wick L. R.*

ATTORNEY GENERAL

*Godfrey*

ASSISTANT ATTORNEY GENERAL



**C E R T I F I C A T E**

I, Geo. H. Ethridge, Assistant Attorney General, in and for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true copy of the above and foregoing brief to Honorable Hayden Covington, Attorney of Record for the Appellant, at his post office address at 117 Adams Street, Brooklyn, New York.

**APR 3 1943**

This the \_\_\_\_\_ day of \_\_\_\_\_ 1943.

*Geo. H. Ethridge*  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL



## APPENDIX "A"

### Chapter 178, Laws of 1942:

Section 1. That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatred, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag, or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

\* \* \*

Section 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

## APPENDIX "B"

## Chapter 155, Laws of 1942:

Section 1. \* \* \*, That all boards of trustees of tax supported free public schools and all other state supported schools of the state of Mississippi, are authorized and hereby directed to instruct and require teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once a week during the school year. The oath of allegiance required is as follows:

"I PLEDGE ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA, AND TO THE REPUBLIC FOR WHICH IT STANDS, ONE NATION, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL."

Section 2. That the state superintendent of education and through him the county superintendents of education shall acquaint all boards of trustees of free public schools with the provisions of this act and see that same are complied with as one of the duties of said trustees.

Section 3. That this act will in no way conflict with or diminish the authority or duties of any board of trustees or school officials in regard to the teachings of citizenship, patriotism, Americanism, or respect for the flag as required by section 6630, section 6544 or other sections of the 1930 Mississippi code or supplements thereto. This act merely places an additional duty on the above mentioned authorities.

## APPENDIX "C"

## Chapter 59, Laws of 1935:

\* \* \*

Section 1. \* \* \* That section 6544 of the Mississippi Code of 1930 be and the same is hereby amended so as to read as follows:

"Section 6544. The flag of the United States shall be displayed at every school building in the state in close proximity to the school building by being hoisted on a pole not less than thirty feet high, during all times the weather will permit without damage to the flag, and the trustees of every school building shall provide for the flag and its display.

Section 2. That every school within the state shall arrange a course of study concerning the flag of the United States, which said course of study shall include a history of the flag and what it represents, and the proper respect therefor.

## APPENDIX "D"

U.S.C.A. Anno. 1942 Supplement, Sections 176-177, 56 Statutes 379, Chapter 435, Sections 4 and 5:

Section 176. No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, state flags, and organization or institutional flags are to be dipped as a mark of honor.

(a) The flag should never be displayed with the Union down save as a signal of dire distress.

(b) The flag should never touch anything beneath it, such as the ground, the floor, water or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

(d) The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general.

(e) The flag should never be fastened, displayed, used or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on part of it, nor attached to it any mark, insignia,

letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

(j) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning. June 22, 1942, c. 435, Stat. 379.

Section 177. During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in a review, all persons present should face the flag, stand at attention, and salute. Those present in uniform should render the right-hand salute. When not in uniform, men should remove the headdress with the right hand holding it at the left shoulder, the hand being over the heart. Men without hats merely stand at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes. June 22, 1942, c. 435, Sec. 5, 56 Stat. 380.